

AGENDA

NORTHERN BEACHES LOCAL PLANNING PANEL

Notice is hereby given that the Northern Beaches Planning Panel will be held via Teleconference on

WEDNESDAY 20 SEPTEMBER 2023

Beginning at 12:00pm for the purpose of considering and determining matters included in this agenda.



Peter Robinson
Executive Manager Development Assessment

Quorum

A quorum is three Panel members

Conflict of Interest

Any Panel Member who has a conflict of Interest must not be present at the site inspection and leave the Chamber during any discussion of the relevant Item and must not take part in any discussion or voting of this Item.

Agenda for the Northern Beaches Local Planning Panel to be held on Wednesday 20 September 2023

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ACKNOWLEDGEMENT OF COUNTRY

As a sign of respect, the Northern Beaches Local Planning Panel acknowledges the traditional custodians of these lands on which we gather and pays respect to Elders past and present.

1.0 APOLOGIES & DECLARATIONS OF INTEREST

Nil

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 6 SEPTEMBER 2023

RECOMMENDATION

That the Panel note that the minutes of the Northern Beaches Local Planning Panel held 6 September 2023 were adopted by the Chairperson and have been posted on Council's website.

4.0 PUBLIC MEETING ITEMS

ITEM 4.1	DA2023/0466 - 45 CABARITA ROAD, AVALON BEACH - ALTERATIONS & ADDITIONS TO EXISTING DWELLING, NEW POOL & LANDSCAPING
AUTHORISING MANAGER	Steve Findlay
TRIM FILE REF	2023/572991
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan & Elevations

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is the subject of 10 or more unique submissions by way of objection.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2023/0466 for alterations & additions to existing dwelling, new pool & landscaping on land at Lot 33 DP 24563, 45 Cabarita Road, AVALON BEACH subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0466
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Responsible Officer:	Jordan Davies
Land to be developed (Address):	Lot 33 DP 24563, 45 Cabarita Road AVALON BEACH NSW 2107
Proposed Development:	Alterations & Additions to existing dwelling, new pool & landscaping
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Claire Veronica Reid
Applicant:	Watershed Design Pty Ltd

Application Lodged:	10/05/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	16/05/2023 to 30/05/2023
Advertised:	Not Advertised
Submissions Received:	15
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 2,404,600.00
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EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a dwelling house, swimming pool and landscaping works.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to receiving 15 submissions, objecting to the proposal.

The concerns raised in the objections predominantly relate to construction traffic management given the narrow nature of the private right of carriageway, known as 'Trappers Way', which the subject site is accessed via. The majority of the submissions directly deal with construction traffic management

due to the high number of properties that rely on vehicular access along Trappers Way. Other concerns raised are in relation to view sharing, building height and scale, built form non-compliances with the DCP, design of the pool and geotechnical risk.

The concerns in relation to construction traffic management can be dealt with via special conditions for a construction traffic management plan, which specifically deal with properties accessed from a Right of Carriageway. Other issues have been resolved during the course of the assessment via amended plans which reduced the extent of the proposed additions, namely the ground floor pergola extension which has been reduced to a more lightweight pergola, reduction in the size of the deck off the pool and reduction to the bulk of the upper floor on the southern side. Landscaping design has also been amended to reduce the impact upon view corridors.

Critical assessment issues include the built form non-compliances with the DCP (which are largely due to the slope of the site and the proposal adopting some of the existing setbacks as part of the alterations and additions).

This report concludes with a recommendation that the NBLPP grant approval to the development application, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks 'Alterations and additions to a residential dwelling, including a swimming pool'. The proposal specifically comprises of the following:

Ground Floor:

- Existing rumpus, lounge, courtyard, laundry, bathroom, stairs, and powder room
- Addition to include kitchen, pantry and cellar
- New deck leading to swimming pool
- Roof garden above lower studio level

Upper Floor:

- Existing entry, study, bedroom 2, bathroom, living room, bedroom 3
- Addition of a master bedroom 1 (with ensuite and walk-in-robe), addition to bedroom 2 and 3, extend front deck
- Replace existing stairs
- Replace and extend existing carport

Studio (New structure)

- Living room
- Bathroom
- Timber deck adjoining the studio
- External stairs leading to a timber deck and pergola

External

- Swimming Pool
- Carport
- Landscape works

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living
Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater 21 Development Control Plan - B8.6 Construction and Demolition - Traffic Management Plan
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.4 Solar Access
Pittwater 21 Development Control Plan - D1.9 Side and rear building line
Pittwater 21 Development Control Plan - D1.11 Building envelope
Pittwater 21 Development Control Plan - D1.14 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 33 DP 24563 , 45 Cabarita Road AVALON BEACH NSW 2107
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western side of Cabarita Road.</p> <p>The site is regular in shape with a frontage of 17.07m along Cabarita Road and a depth of 84m. The site has a surveyed area of 1266m². The site is both burdened and benefitted by the private right of way commonly known as 'Trappers Way'. The right of way is located at the western boundary of the site. Trappers way is a private right of way which services the dwellings located on the Western side of Cabarita Road and the eastern side of Riverview Road. The site currently only has vehicular access off Trappers Way, which is the same scenario for the majority of surrounding dwellings.</p> <p>The site is located within the E4 Environmental Living zone</p>

and accommodates a two storey dwelling house and carport.

The site has a steep topography that falls from the west to the east, with a gradient exceeding 30% across the site.

The site has a mixture of mature native trees and vegetation, along with low lying shrubs and grasses which contribute to biodiversity of the area. The site has a number of mature Spotted Gum Trees scattered within the site. The extent of vegetation is most accurately described in the submitted Ecological Assessment.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by detached one and two storey and part 3 storey dwelling houses of varying ages. All sites being characterised by a landscape setting. Immediately to the south is a two storey dwelling with a detached studio. To the south-east is a two/three storey dwelling. To the north is a 2 storey dwelling house. To the west (across Trappers Way) are two storey dwelling houses. To the east (across Cabarita Road) are two and three storey dwelling houses facing the waterway.

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

- **PLM2022/0194** - Pre-lodgement application for *"Demolition works including the retention of a portion of the existing building and construction of a new dwelling house including a carport and swimming pool"*
- **DA2019/1355** - Construction of a carport was staff on approved on 28/01/2020 by Northern Beaches Council. It is noted that construction has not commenced for this structure. The carport is accessed off Cabarita Road.
- **N0297/15** for a 'Secondary dwelling' was approved on 01/12/2015 by Pittwater Council. It is noted that this consent was not activated and lapsed on 1/12/2022.

History of current application

Council wrote to the applicant on 29 June 2023 requesting additional information and changes to the plans following an initial assessment, including review of the public submissions.

In response, the applicant provided additional documentation and an amended set of plans on 31 July 2023.

The changes were a reduction to the proposed development and therefore, did not trigger renotification as per Council's Community Consultation Plan.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to</p>

Section 4.15 Matters for Consideration	Comments
	<p>request additional information. Additional information was requested in relation to the Geotechnical report, plan amendments, landscape plan amendments and information on status of previous approvals on the site (being a previous carport and granny flat). This information was subsequently provided and considered as part of the DA assessments.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 16/05/2023 to 30/05/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 15 submission/s from:

Name:	Address:
Maxwell Macarthur Debra Macarthur	37 Trappers Way AVALON BEACH NSW 2107
Craig Boaden	34 Trappers Way AVALON BEACH NSW 2107
Bill Tulloch	Po Box 440 MONA VALE NSW 1660
Mr Geoffrey Martin Hosking Ms Paula Hile	38 Trappers Way AVALON BEACH NSW 2107
Mr Peter Brukhard Goodrich	6 Trappers Way AVALON BEACH NSW 2107
Mary Jean Morel	130 Riverview Road AVALON BEACH NSW 2107
Mr David Henry Lyall	54 Trappers Way AVALON BEACH NSW 2107
Ms Caroline Maxine Bridget Kelly	50 Trappers Way AVALON BEACH NSW 2107
Mr Paul Anthony Whittingham	40 Trappers Way AVALON BEACH NSW 2107
Ms Lindsay Anne Struthers	35 Trappers Way AVALON BEACH NSW 2107
Ms Emma Jane Langham	49 Trappers Way AVALON BEACH NSW 2107
Mr Keith Alexander Root Mrs Christine Root	Po Box 577 AVALON BEACH NSW 2107
Mr Warren Kenneth Cross Ms Cheryl Margaret Buckley	36 Trappers Way AVALON BEACH NSW 2107
Donald Gutteridge	21 Trappers Way AVALON BEACH NSW 2107
Trappers Way Road Fund Incorporated	54 Trappers Way AVALON BEACH NSW 2107

The following issues were raised in the submissions:

- Concerns with construction management and construction traffic management due to the constrained nature of Trappers Way, which at present is the only vehicular access to the site.
- The proposal is over the 8.5m height and requires a Clause 4.6 variation request. The building is excessive in height.
- Built form non-compliances with the Pittwater DCP including envelope and setbacks.
- View impacts from the development for 49 Cabarita Road.

- Overshadowing impacts from the development for 49 Cabarita Road.
- The proposal is not alterations and additions.
- Design of the swimming pool is excessive and has privacy impacts. Impact of pool plant.
- Geotechnical concerns. The geotechnical report does not reflect the latest issue of plans.
- Concerns with stormwater runoff.

The above issues are addressed as follows:

- **Concerns with construction management and construction traffic management due to the constrained nature of Trappers Way, which at present is the only vehicular access to the site.**

Comment: The majority of the submissions have raised concern with construction traffic management given the constrained nature and narrowness of Trappers Way, which is the method of vehicular access to this site. The submissions have called for bonds and special conditions to be placed on the private right of way for construction management. Council does not legally have an ability to require a bond for a private right of carriageway. The objections call for all construction to be undertaken from Cabarita Road, including delivery of construction materials. This is considered unfeasible and unreasonable given the steepness of the site and difficulty transporting materials up the hill.

Council's current approach to managing construction on Trappers Way is to impose a 'Construction Traffic Management Plan' (CTMP) condition which is to be prepared prior to the Issue of a Construction Certificate, and signed off by Council's Traffic Engineers. The condition has specific requirements for properties accessed off a right of carriageway, including (but not limited to) maximum vehicle tonnage, requirement for dilapidation report for the right of way, details of how disruptions to other users of the ROW will be managed, restriction on parking and storage of materials and provisions for contractor parking. The CTMP standard condition has recently been updated in direct response to the concerns from the residents along Trappers Way from recent construction activity.

The applicant for this DA has also put forward a plan at DA26 titled 'Traffic Plan + Construction Zone' showing a general arrangement of where materials could be stored and a trades vehicle parked within the site and outside of the ROW. The details of this plan will be subject to the final condition for a construction traffic management plan, to be signed off by Council's traffic team.

Subject to the condition for a CTMP, Council is satisfied that construction traffic and construction impacts can be managed appropriately.

- **The proposal is over the 8.5m height and requires a Clause 4.6 variation request. The building is excessive in height.**

Comment: This is addressed under Clause 4.3 PLEP within this report. Clause 4.3(2D) is enacted and no Clause 4.6 is required. The proposed height is not considered excessive given the two storey character of the building and minor protrusion of the 8.5m height limit, which is permitted under Clause 4.3(2D) PLEP.

- **Built form non-compliances with the Pittwater DCP including envelope and setbacks.**

Comment: Each of the built form non-compliances are addressed in detail within this report. Overall, the proposal is considered compatible with the desired future character despite the minor breaches to the DCP, which are caused due to the site slope and maintenance of some existing setbacks.

- **View impacts from the development for 49 Cabarita Road.**

Comment: A view sharing assessment is undertaken later in this report under Clause C1.3 View Sharing.

- **Overshadowing impacts from the development for 49 Cabarita Road.**

Comment: Consideration of overshadowing has addressed under Clause C1.4 Solar Access later within this report.

- **The proposal is not alterations and additions.**

Comment: The proposal is lodged as alterations and additions. During the assessment, the assessment officer has consider the planning principle established in *Coorey v Municipality of Hunters Hill [2013] NSWLEC 1187*, including the detailed analysis provided within the SOEE. Upon review of plans and analysis provided within the SEE, the proposal is appropriately categorised as alterations and additions.

- **Design of the swimming pool is excessive and has privacy impacts. Impact of pool plant.**

Comment: The decking around the swimming pool has been reduced to resolve privacy impacts. The design of the pool is fully compliant with the setbacks and has been provided with landscape surrounding the pool to soften the appearance along the side elevations. A condition has been recommended for pool plant noise to mitigate impacts.

- **Geotechnical concerns. The geotechnical report does not reflect the latest issue of plans.**

Comment: An updated geotechnical report has been provided to reference the latest submission of plans. Council's engineers are satisfied with the submitted geotechnical report and the report has addressed Council's relevant DCP/LEP controls in regards to geotechnical risk. Conditions have been recommended for dilapidation reports.

- **Concerns with stormwater runoff.**

Comment: Council's engineers have reviewed the method of stormwater drainage and are satisfied, subject to conditions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>Supported Subject to Conditions</p> <p>The proposal is supported with regard to landscape issues.</p>

Internal Referral Body	Comments
	<p>Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause C4 zone Environmental Living, and the following Pittwater 21 DCP controls (but not limited to):</p> <ul style="list-style-type: none"> • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D1 Avalon Beach Locality <p>The site is located in the C4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment, including the retention of natural landscape features and existing trees, to satisfy the landscape objectives of the C4 Environmental Living zone.</p> <p>The Arboricultural Impact Assessment (AIA) identified eight trees of which all can be retained except for trees 2 and 5. Trees 2 and 5 are exempt by species and as such do not require consent for removal. Native tree replacement planting is proposed which will help to offset any canopy loss. All proposed stormwater/sewer infrastructure shall be installed in accordance with the tree protection requirements. All trees and vegetation shown to be retained shall be protected as per the recommendations outlined in the AIA, subject to the imposed conditions.</p> <p>The landscape proposal is generally supported and all on slab landscaping shall meet Council's minimum soil depth requirements. All proposed planting shall be installed in accordance with the requirements outlined in the conditions of consent. Although a cultivar is proposed, all <i>Pennisetum</i> species shall be substituted with a suitable alternative as Council deems this species an environmental threat.</p>
NECC (Bushland and Biodiversity)	<p>Supported Subject to Conditions</p> <p>AMENDED COMMENTS 04/07/2023</p> <p>An ecological assessment has been submitted with the application in relation to the alterations and additions to a single dwelling including a new pool and landscaping. The report has indicated that impacts to Pittwater Spotted Gum Forest will not be significant and confirmed that no impacts to areas mapped within the Department of Planning and Environment's Biodiversity Values Map (BV Map) would take place.</p> <p>An Arboricultural Impact Assessment has been submitted with the application and concluded that the removal of 2 trees will be required. Tree 2 and 5 are exempt by height (T2) and species (T5) and therefore, no objections are raised. The proposed landscape plan includes planting that will compensate for the loss of the removal of the two trees and therefore, compliance with PDGP B4.7 is achieved as no net loss of canopy will take place.</p>

Internal Referral Body	Comments
	<p>The development is designed, sited and will be managed to avoid any significant adverse environmental impact.</p> <p>ORIGINAL COMMENTS 29/05/2023</p> <p>The proposal seeks approval for alterations and additions to a single dwelling including a new pool and landscaping.</p> <p>The comments in this referral relate to the following controls and provisions:</p> <ul style="list-style-type: none"> • NSW Biodiversity Conservation Act 2016 • NSW Biodiversity Regulation 2017 • Pittwater LEP - Part 7.6 Biodiversity Protection • Pittwater 21 DCP - Clause B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community <p>Portions of the site are identified on the Department of Planning and Environment's Biodiversity Values Map (BV Map). Under the NSW Biodiversity Conservation Act, any removal of native vegetation from within mapped areas will trigger the Biodiversity Offsets Scheme (BOS) and the requirement for a Biodiversity Development Assessment Report (BDAR).</p> <p>Assessment of the proposal by an ecologist accredited under the NSW Biodiversity Assessment Method (BAM) is required to be submitted with the DA. Should the Accredited Assessor determine that the proposal does not trigger entry into the BOS, this should be stated in a letter or report. Should it be determined that entry into the BOS is triggered, the DA is to be accompanied by a BDAR which outlines how the proposal has been designed and sited to avoid and minimise impacts to biodiversity. Further information on assessment requirements can be found in Council's Biodiversity Guidelines for Applicants. Any BDAR must be finalised and signed by the Accredited Assessor within 14 days of the DA lodgement date (in accordance with Section 6.15 of the BC Act). The assessor is requested to add Northern Beaches Council as a case party to the BAM assessment in BOAMS and submit the case to the consent authority in BOAMS prior to lodgement of the DA.</p> <p>Alternatively, the applicant is able to request a BV Map review from the Department of Planning and Environment. There is no fee for an explanation report and applications are usually completed within 10-15 working days.</p> <p>https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity-offsets-scheme/about-the-biodiversity-offsets-scheme/when-does-bos-apply/biodiversity-values-map/biodiversity-values-map-review.</p> <p>The Biodiversity referral will be completed upon receipt of evidence</p>

Internal Referral Body	Comments
	of the determination of the BV Map review and/or the letter/report prepared by an accredited assessor in relation to the BOS being triggered or not.
NECC (Development Engineering)	<p>Supported Subject to Conditions</p> <p>The alterations and additions require the provision of on site detention. This is shown on the submitted stormwater plans and is considered acceptable. The site falls to the road, however it is proposed to discharge stormwater to the road using a level spreader. Given the difficulties in piping the stormwater to the kerb, this method of stormwater disposal is considered reasonable. The site is in a geotechnical hazard area and a geotechnical report has been submitted.</p>
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A486604 dated 27 February 2023).

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m/10m *Clause 4.3(2D) allows up to 10m	6.3m - 9.1m	N/A	Yes* *Under 4.3(2D)

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes

Clause	Compliance with Requirements
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone C4 Environmental Living

The C4 zone objectives are considered below:

- To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
Comment: The proposal has demonstrated it will retain reasonable amenity for surrounding areas. The proposal retains significant trees and generally a two storey built form consistent with the surrounding buildings. Biodiversity values are retained as significant trees are retained.
- To ensure that residential development does not have an adverse effect on those values.*
Comment: The proposal does not have an adverse impact on the scenic value of the area with a single storey presentation to Trappers Way and limited visibility from Cabarita Road.
- To provide for residential development of a low density and scale integrated with the landform and landscape.*
Comment: The proposal is low density consisting of a dwelling house only. The proposal steps down the site with the slope of the land and integrates landscaping around the building footprint to allow landscaping to soften the building,
- To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors*
Comment: The proposal does not require the removal of any significant trees and will provide new landscape planting within the site.

The proposal is permissible in the zone and meets the zone objectives.

4.3 Height of buildings

The LEP has a provision for sloping sites to allow a minor portion of the building to encroach the 8.5m height limit, up to 10m. The proposal has a maximum height of 9.1m, with the encroachments from one small section of the roof. The provision under the LEP is as follows:

(2D) Despite subclause (2), development on land that has a maximum building height of 8.5 metres shown for that land on the Height of Buildings Map may exceed a height of 8.5 metres, but not be more than 10.0 metres if:
(a) the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the Height of Buildings Map is minor, and

Comment: Council is satisfied the encroachments are minor, with the roof overhang the encroaching portion only.

(b) the objectives of this clause are achieved, and

Comment: The objectives of the control are considered below:

(a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,

Comment: The dwelling is two stories which is consistent with the surrounding locality. The minor breach of 0.6m over the height will not be visually discernable from the surrounding sites or render the proposal incompatible.

(b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,

Comment: The proposal is two stories and largely below the height limit, presenting a single storey presentation to Trappers Way and will be setback such a distance from Cabarita Road that the breach will not be visually impactful. The proposal due to the two storey presentation and setbacks to the street is compatible.

(c) to minimise any overshadowing of neighbouring properties,

Comment: The proposal maintains reasonable sunlight for the surrounding properties and no unreasonable impacts arise due to the breach.

(d) to allow for the reasonable sharing of views,

Comment: The breach of the building height does not impact upon any important views.

(e) to encourage buildings that are designed to respond sensitively to the natural topography,

Comment: Due to the proposal being alterations and additions the proposal minimises site disturbance. The proposal generally follows the maximum 8.5m building height with only the minor breach, as permitted by the control.

(f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

Comment: The proposal will sit beneath the predominant tree canopy and will blend into the surrounding area. There are no adjoining heritage items.

(c) the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%), and

Comment: Council has measured the slope of the land beneath the building footprint and are satisfied that the gradient of the land exceeds 30% (measured to be 32%).

(d) the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.

Comment: The nature of the proposal is for alterations and additions which has therefore used the existing footprint of the dwelling and minimised cut and fill. As shown on the below section, the building suitably steps down the site.

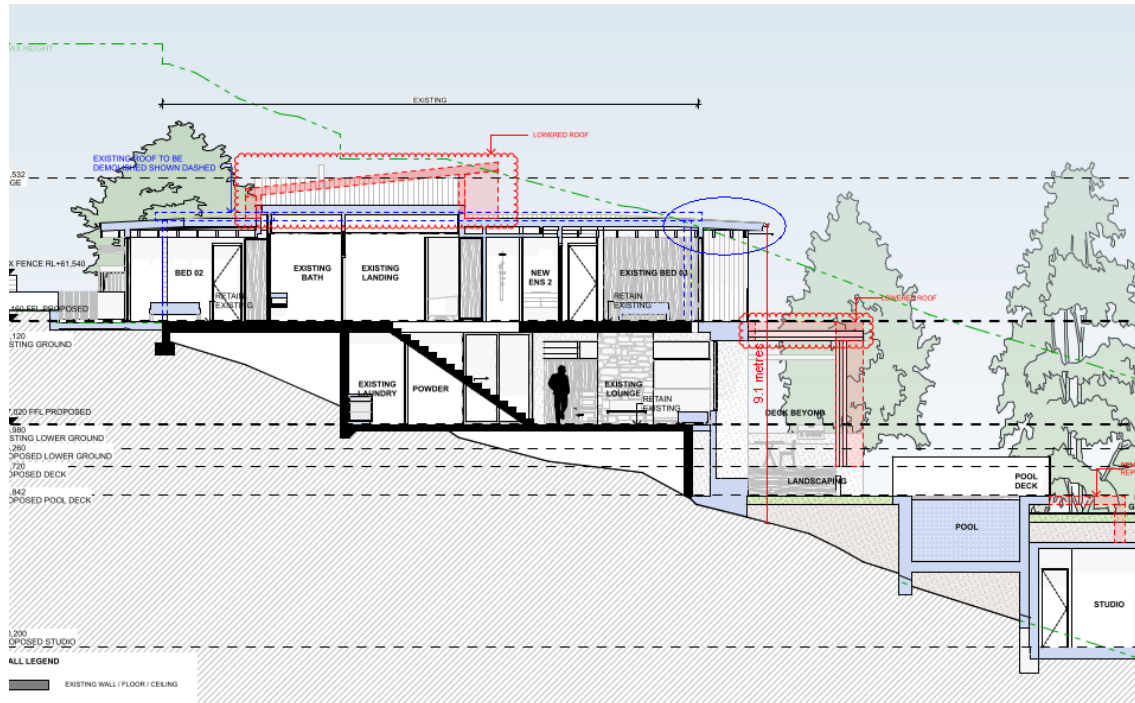


Figure 1 - Extract of long section showing of building. Blue circle showing the area encroaching the 8.5m height plane.

Based on the above assessment, the consent authority can be satisfied that the requirements of Clause 4.3(2D) have been met.

7.2 Earthworks

The objective of Clause 6.2 - 'Earthworks' requires development to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

In this regard, before granting development consent for earthworks, Council must consider the following matters:

(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development

Comment: The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

(b) the effect of the proposed development on the likely future use or redevelopment of the land

Comment: The proposal will not unreasonably limit the likely future use or redevelopment of the land.

(c) the quality of the fill or the soil to be excavated, or both

Comment: The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to

be of a suitable quality.

(d) the effect of the proposed development on the existing and likely amenity of adjoining properties

Comment: The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the recommendation of this report to limit impacts during excavation/construction.

(e) the source of any fill material and the destination of any excavated material

Comment: The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

(f) the likelihood of disturbing relics

Comment: The site is not mapped as being a potential location of Aboriginal or other relics.

(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area

Comment: The site is not located in the vicinity of any watercourse, drinking water catchment or environmentally sensitive areas. Retention of mature trees has been considered in the design of the building.

(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Comment: Conditions are included in the recommendation of this report that will minimise the impacts of the development.

(i) the proximity to and potential for adverse impacts on any heritage item, archaeological site or heritage conservation area.

Comment: The site is not a heritage item, in the vicinity of a heritage item or in a conservation area or archaeological site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of PLEP 2014, Pittwater 21 DCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

7.6 Biodiversity protection

Before determining a development application for development on land to which this clause applies, this clause requires the consent authority to consider:

(a) whether the development is likely to have:

(i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and

(ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and

(iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition

of the land, and

(iv) any adverse impact on the habitat elements providing connectivity on the land, and

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the development will not have any adverse impact on the condition, ecological value and significance of the fauna and flora on the land; the importance of the vegetation on the land to the habitat and survival of native fauna; or the habitat elements providing connectivity on the land. Council is also satisfied that the development will not unreasonably fragment, disturb, or diminish the biodiversity structure, function, or composition of the land.

(b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the proposal includes appropriate measures to avoid, minimise, or mitigate the impacts of the development.

Before granting development consent, this clause also requires the consent authority to be satisfied that:

- (a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*
- (b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or*
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the development is designed, sited and will be managed to any significant adverse environmental impact.

7.7 Geotechnical hazards

Under Clause 7.7 Geotechnical Hazards, before determining a development application for development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account all geotechnical risks:

- (a) site layout, including access,*
- (b) the development's design and construction methods,*
- (c) the amount of cut and fill that will be required for the development,*
- (d) waste water management, stormwater and drainage across the land,*
- (e) the geotechnical constraints of the site,*
- (f) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment:

The proposed development is supported by a geotechnical risk assessment, architectural plans, an excavation plan, and stormwater management plans that demonstrate all geotechnical risks have

been taken into account. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

Development consent must not be granted to development on land to which this clause applies unless:
(a) *the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and*

Comment:

The proposed development is supported by a geotechnical risk assessment and stormwater management plans that demonstrate waste water, stormwater and drainage are suitably managed on site. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

(b) *the consent authority is satisfied that:*

- (i) *the development is designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development, or*
- (ii) *if that risk or impact cannot be reasonably avoided - the development is designed, sited and will be managed to minimise that risk or impact, or*
- (iii) *if that risk or impact cannot be minimised - the development will be managed to mitigate that risk or impact.*

Comment:

The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent. As such, Council can be satisfied that the proposed development has been designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	Cabarita Road 6.5m	30m Deck 42m Studio 50m Dwelling	N/A	Yes
Rear building line	'Trappers Way' 6.5m	4.1m carport 6.7m deck 8.46m dwelling	N/A	No Yes Yes
Side building line	2.5m	South Dwelling - 1.2m to 2.7m Pool - 3.9m Studio - 4.6m	N/A	No Yes Yes
	1m	North Carport - Nil to 0.4m Dwelling - 1m Pool - 1m Studio - 2m	N/A	No Yes Yes Yes
Building envelope	3.5m	South Outside	N/A	No
	3.5m	North Outside	N/A	No

Landscaped area	60%	59% (748m ²)	1.6%	Yes
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Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
C5.1 Landscaping	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.5 Building colours and materials	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D1.8 Front building line	Yes	Yes
D1.9 Side and rear building line	No	Yes
D1.11 Building envelope	No	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	No	Yes
D1.20 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

B8.6 Construction and Demolition - Traffic Management Plan

A condition of consent requiring a Construction Traffic Management Plan has been recommended given the site is primarily accessed via a Right of Carriageway which is relatively tight and has limited parking. The applicant has provided a plan showing where a builders vehicle can be parked within the site during construction (off the right of carriageway) and where material storage can occur within the site clear of the ROC. This plan, together with the requirement for a CTMP, satisfies Council that works can be carried out without unreasonable impacts upon the ROC or surrounding streets.

C1.3 View Sharing

Merit consideration

The development is considered against the underlying Outcomes of the Control as follows:

- *A reasonable sharing of views amongst dwellings.*

Comment:

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, are applied to the proposal.

1. Nature of the views affected

"The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured".

Comment to Principle 1:

The view to be affected is views of vegetation and highly filtered district views looking north-east from 49 Cabarita Road. The view is a partial view and does not contain any iconic features. Figure 1 shows the existing view.



Figure 1 - Existing view looking north-east, image supplied in the objection letter from 49 Cabarita Road.

2. What part of the affected property are the views obtained

“The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic”.

Comment to Principle 2:

The view is obtained overlooking a **side boundary**. The view is obtained from the primary private open space, which is a deck adjoining a living room. The view is also obtained from within the living room at the same angle. Views are available from a seated and standing position.

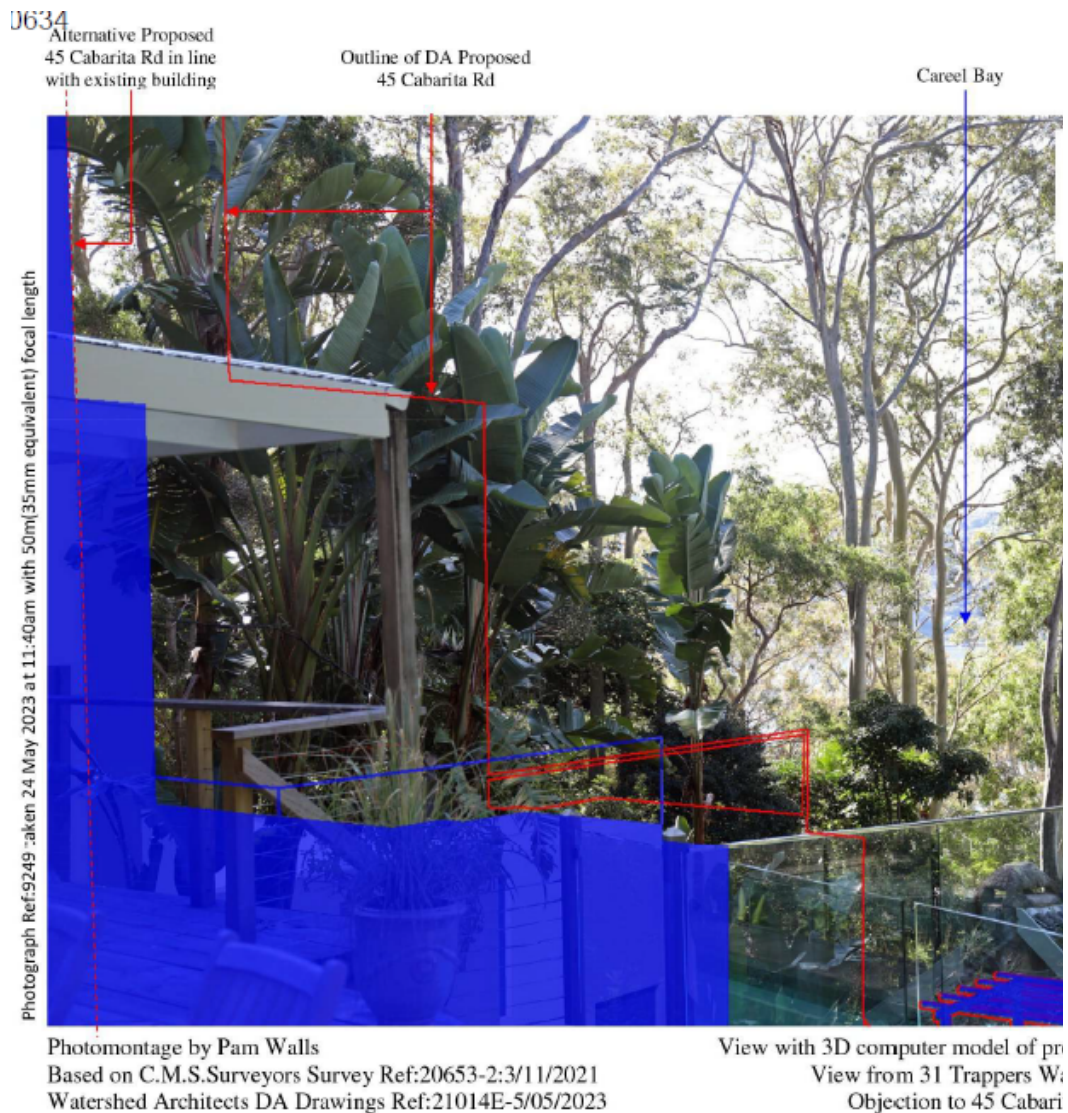
3. Extent of impact

“The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued

because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating".

Comment to Principle 3:

The extent of the view impact from the proposal is shown in the photomontage provided by the objector at 49 Cabarita Road below. The proposal is outlined in red line.



As shown in the above image, only views of vegetation and highly filtered district views are impacted. It is also worthy to mention that the application has been amended to delete the ground floor blade wall, which is the lower projection into the view corridor. As such, the proposal has been amended to pull back the lower floor and retain more side views. The view

impact is only limited to a 1.5m extension to the existing building footprint at the southern side.

As can be seen in the above image, the quality water views are unimpacted via the proposal and vast district views are maintained. Given that there is only a small additional impact to the filtered district views, the view impact is considered minor.

4. Reasonableness of the proposal that is causing the impact

"The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable."

Comment to Principle 4:

As a result of the amended proposal, which has deleted the ground floor blade wall projection, the proposal maintains view sharing and there is no impact to any high value view. The view impact is across a side boundary only, however it is minor overall in the scheme of views currently obtained.

The amended proposal has demonstrated sufficiently skillful design, with the additions not impacting on the water view corridor. The minor breach to the building envelope for the upper level only impacts the sky view and no important water or district view.

Overall, this is a reasonable proposal in the context of view sharing.

- *Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and where possible, enhanced.*

Comment:

No impact to views from public places, satisfied.

- *Canopy trees take priority over views.*

Comment:

No tree removal has been proposed in order to obtain views.

Impact from Proposed Landscaping

The neighbouring property at 49 Cabarita Road (to the south) has raised concern about view sharing due to the proposed landscape planting along the southern boundary of the subject site. As part of the submission, the property provided the below view montage showing the likely impact of the proposed vegetation to be planted and proposed building additions:

2023/400634

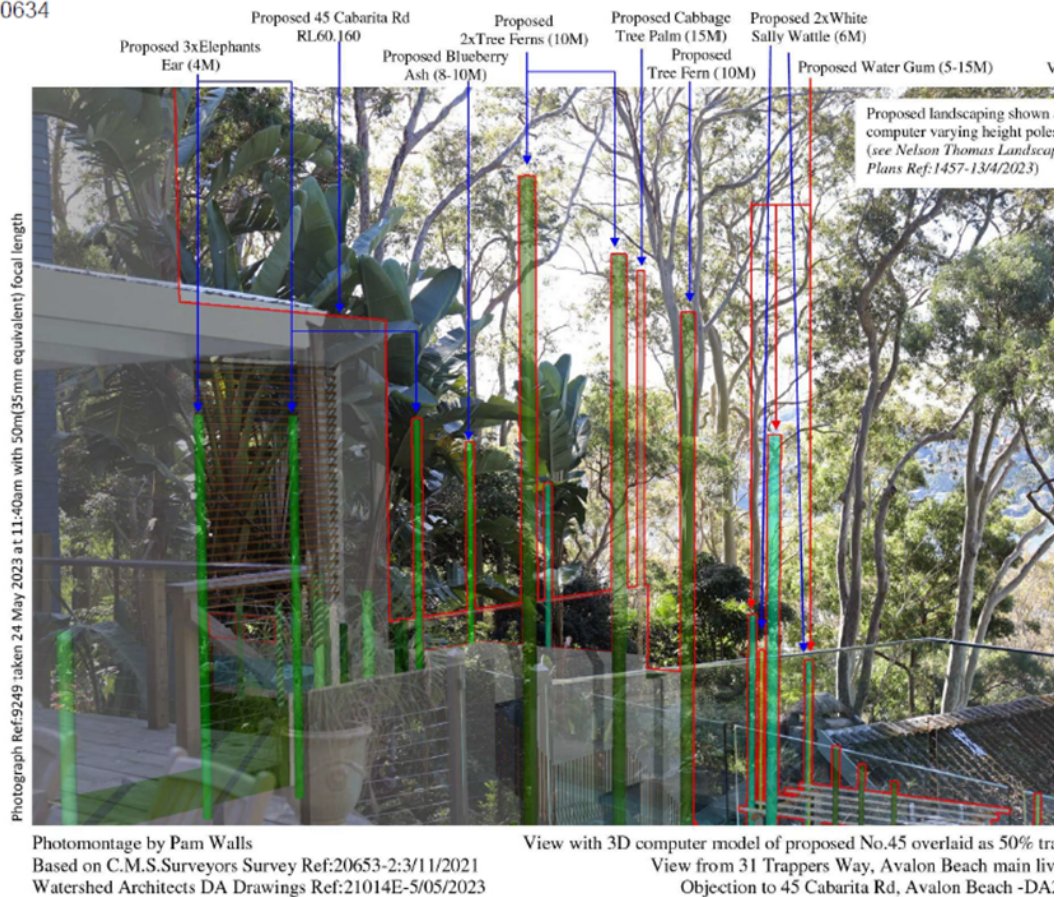


Figure 1 - Extract from submission from 49 Cabarita Road showing impact of vegetation proposed on original landscape plan.

Council requested that the applicant amend the landscaping plan to reduce the height of vegetation along the southern boundary. The applicant has provided an amended landscape plan, replacing the landscaping with a low and medium height landscaping only in the area of the concerned view corridor.

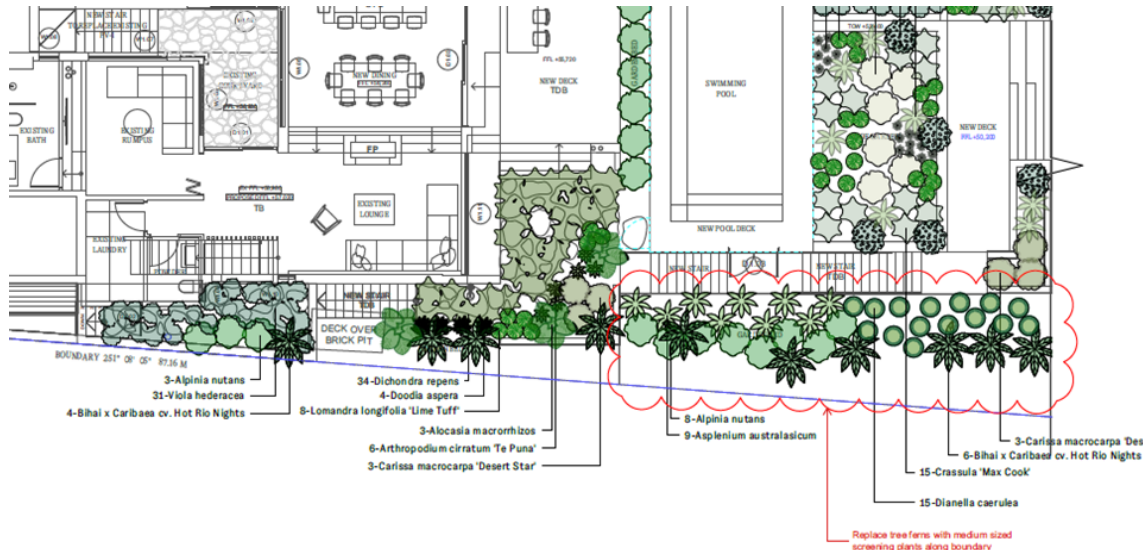


Figure 2 - Updated landscape plan reducing landscape height along southern boundary.

As such, Council is satisfied the proposed landscaping will not impact upon the existing view corridors.

The proposal therefore does not result in a detriment to view sharing due to the landscaping.

Conclusion of views

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

C1.4 Solar Access

The DCP requires the following in to solar access:

The main private open space of each dwelling and the main private open space of any adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st.

Windows to the principal living area of the proposal, and windows to the principal living area of adjoining dwellings, are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st (that is, to at least 50% of the glazed area of those windows).

The submitted shadow diagrams demonstrate that there is no change to the level of solar access received to the main private open space of 49 Cabarita Road (which is considered to be the deck area adjoining the eastern side of the dwelling). The shadow diagrams also demonstrate there is no change to the level of solar access presently enjoyed to the main living room windows of 49 Cabarita Road.

A concern has been raised about solar access to the detached studio at the rear of 49 Cabarita Road. Firstly, the DCP does not make provision for solar access to be retained for detached studio buildings, it only requires solar access to be maintained to the main POS or living room windows. Also, any overshadowing to the detached studio results from the proposed new swimming pool and studio, which is fully compliant with the DCP controls in terms of height, envelope and setback. Therefore, any overshadowing from this structure to 49 Cabarita Road is considered reasonable.

D1.9 Side and rear building line

Description of non-compliance

Clause D12.9 of the Pittwater 21 DCP requires development be setback at least 6.5m from the rear boundary (western boundary), 1.0m from the northern side boundary and 2.5m from southern side boundary.

The development proposes the following non-compliance:
Western rear setback (6.5m required) - Carport setback 4.1m
Southern side setback (2.5m required) - Dwelling 1.2m to 2.7m
Northern side setback - (1m required) - Carport nil to 0.4m

The DCP provides a variation clause for alterations and additions, stating that *"Where alterations and additions to existing buildings are proposed, maintenance of existing setbacks less than as specified may be considered where it is shown that the outcomes of this clause are achieved."*

It is noted that the variations are caused by maintaining the setback of the existing house and carport.

Merit Consideration

To achieve the desired future character of the Locality.

Comment: The proposed development is considered to be appropriate within its context, consistent with the bulk and scale of surrounding development in the locality and generally in keeping with the desired future character of the locality. The spatial separation of the existing building footprint is generally maintained and as such, maintains the character of the site.

The bulk and scale of the built form is minimised.

Comment: The building is well modulated to break up the bulk and scale, and responds to the slope of the site through the stepping of levels. The proposed development is generally set below the height of canopy trees surrounding the site and in the locality. It is considered that the bulk and scale of the proposal would not be out of character with the existing streetscape and wider locale.

Equitable preservation of views and vistas to and/or from public/private places. To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.

Comment: The proposed development adequately preserves views and vistas to and from public and private places for the reasons detailed in the section of this report relating to Clause C1.3 View Sharing of the P21 DCP.

To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.

Comment: A reasonable level of privacy, amenity and solar access is maintained by the residents of the subject site and the adjoining dwellings.

Substantial landscaping, a mature tree canopy and an attractive streetscape.

Comment: The proposed development will be softened by existing landscaping as seen from the street. Multiple significant canopy trees are proposed to be retained in order to visually reduce the built form. The application has been reviewed by Council's Bushland and Biodiversity Officer and Landscape Officer who have raised no objection to the proposal subject to recommended conditions. Overall, retained and proposed vegetation planting appropriately breaks up the building massing and reduce the visual impact of the proposal.

Flexibility in the siting of buildings and access.

Comment: The proposed development is sited with varying setbacks, which ensure appropriate articulation and modulation of built form. Despite non-compliance in small areas, the proposal is considered to be an appropriate response to the development of the site. Adequate pedestrian access to the site is maintained. The location of the carport is the only logical place for parking off Trappers way and this provides two off-street spaces, to reduce the need for parking in Trappers Way where there is limited room for parking.

Vegetation is retained and enhanced to visually reduce the built form.

Comment: The proposed development will be softened by existing landscaping as seen from the street. Multiple significant canopy trees are proposed to be retained in order to visually reduce the built form. The application has been reviewed by Council's Bushland and Biodiversity Officer and Landscape Officer who have raised no objection to the proposal subject to recommended conditions. Overall, retained and proposed vegetation planting appropriately breaks up the building massing and reduce the visual impact of the proposal.

A landscaped buffer between commercial and residential zones is achieved.

Comment: N/A the subject site does not adjoin a commercial zoned area.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D1.11 Building envelope

Description of non-compliance

The control requires that a building must be sited within the building envelope which is determined by projecting planes at 45° from a height of 3.5m above the ground level at the side boundary.

The proposed development encroaches into the side boundary envelope along the south elevation to a height of 1.2m and along the northern elevation, up to 0.6m. See extract below:

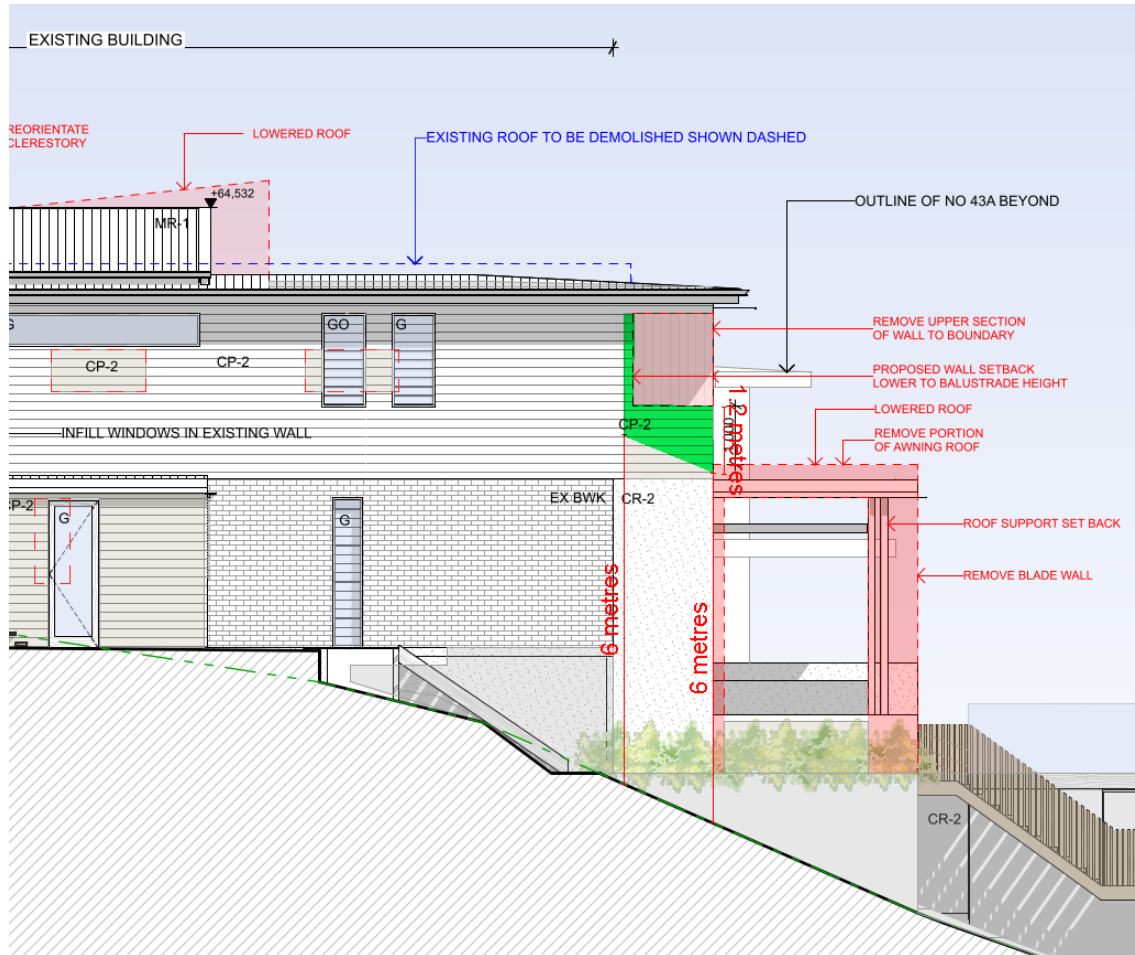


Figure 1 - Southern envelope encroachment, shown in green.

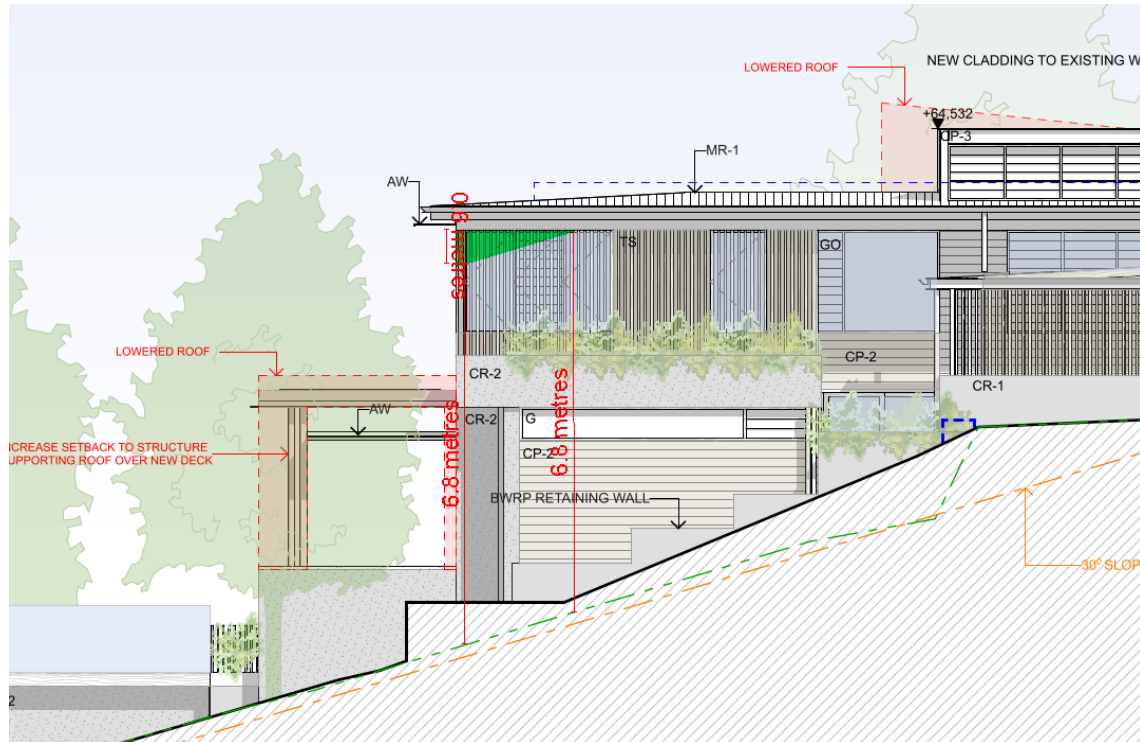


Figure 2 - Northern envelope encroachment, shown in green.

The DCP contains a variation clause, stating that where the building footprint is situated on a slope over 16.7 degrees (30%), variation to this control will be considered on a merits basis. The proposed development is situated on land with a slope of approximately 32%. As such, the variation may be applied.

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

To achieve the desired future character of the Locality.

Comment: The proposed development is considered to be consistent with the desired future character of the Avalon Beach locality given the two storey appearance and generous amount of landscaping around the building footprint.

To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.

Comment: The setbacks of the proposed development to the side boundaries assists in mitigating the scale of the dwelling. The proposal includes adequate vegetation in order to screen the built form of the proposed development. The proposed development is generally set below the height of the trees on site and in the locality.

To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.

Comment: The proposed development is primarily sited within the footprint of the existing dwelling. The extension of the dwelling towards the east is not considered to cause unreasonable impact to the spatial characteristics of the natural environment. Some areas of excavation are required, but the extent is considered acceptable in the context of the site and locality. The proposal includes comparable setbacks, and bulk and scale to existing and approved developments in the locality. As such, the proposal provides an adequate response and relationship to the spatial characteristics of the existing natural environment.

The bulk and scale of the built form is minimised.

Comment: As discussed, the proposed development is of comparable building bulk and scale to existing and approved developments in the locality. The proposed development appropriately responds to the topography of the land. Existing trees and vegetation are retained that assist in mitigating the bulk and scale of the proposed development.

Equitable preservation of views and vistas to and/or from public/private places.

Comment: The proposed development adequately preserves views and vistas to and from public and private places. The non-compliance does not result in direct view impacts upon any important landscape feature such as a water view.

To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.

Comment: The proposed development is appropriately designed so as to provide a reasonable level of privacy, amenity and solar access for the subject site and adjacent sites.

Vegetation is retained and enhanced to visually reduce the built form.

Comment: Existing trees and vegetation are retained that assist in mitigating the built form of the proposed development.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D1.14 Landscaped Area - Environmentally Sensitive Land

Description of non-compliance

The Control requires a minimum of 60% (759sqm) of the total site to be landscaped area.

The proposed development provides 59% (748sqm) of the total site area as landscaped area, which represents a variation of 1.6%.

Upon achievement of the objectives of the Control, the variations provision allows for up to 6% of the site to be impervious landscape treatment provided such areas are used for outdoor recreational purposes only. Upon achievement of the aforementioned variation, the landscape area total would increase over the required 60%. In addition, rooftop planters have been used to further enhance landscaping, however are not technically counted towards the LOS control.

Nevertheless less the proposal is assessed against the relevant objectives of this clause:

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying objectives of the Control as follows:

Achieve the desired future character of the Locality.

Comment: The proposed development is consistent with the desired future character of the Avalon Beach locality given the two storey character, spatial separation and maintenance of mature landscaping,

The bulk and scale of the built form is minimised.

Comment: The proposal is a part one/two storey house and is well set back from the street boundary. The proposal will provide sufficient landscape buffers, which will assist in visually breaking down the built form.

A reasonable level of amenity and solar access is provided and maintained.

Comment: A reasonable level of privacy, amenity and solar access is maintained by the residents of the subject site and the adjoining dwellings.

Vegetation is retained and enhanced to visually reduce the built form.

Comment: Multiple significant canopy trees are proposed to be retained in order to visually reduce the built form. The application has been reviewed by Council's Bushland and Biodiversity Officer and Landscape Officer who have raised no objection to the proposal.. Overall, retained and proposed vegetation will appropriately break up the building massing and reduce the visual impact of the proposal.

Conservation of natural vegetation and biodiversity.

Comment: The proposed development will not not impact core bushland and the proposed landscaping and tree replacements will ensure no loss of Spotted Gum Forest trees. The application has been reviewed by Council's Bushland and Biodiversity officer and Landscape Officer who have raised no objection to the proposal subject to recommended conditions.

Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels.

Comment: The proposal has been reviewed by Council's Development Engineer, having regard to provisions for stormwater management and has raised no objection subject to conditions included in the recommendation of this report. The proposed stormwater measures within the property are capable of reducing stormwater runoff, preventing soil erosion and siltation of natural drainage channels.

To preserve and enhance the rural and bushland character of the area.

Comment: As above, multiple significant canopy trees are proposed to be retained in order to visually reduce the built form and maintain the bushland character of the site. The application has been reviewed by Council's Bushland and Biodiversity Officer and Landscape Officer who have raised no objection to the proposal subject to recommended conditions. Overall, retained and proposed

vegetation and the conditioned replacement planting would appropriately preserve the bushland character of the area.

Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management.

Comment: The on-site capacity of pervious surface is considered capable of providing infiltration of water to the water table, minimising run-off and assisting with stormwater management.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$24,046 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,404,600.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

PLANNING CONCLUSION

This proposal, for alterations and additions to a dwelling house and swimming pool has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to receiving 15 submissions.

The concerns raised in the objections have been addressed and resolved by conditions requiring a construction traffic management plan and through plan amendments through the course of the assessment.

The critical assessment issues in relation to building height, envelope and setbacks are addressed throughout the report and overall the proposal is consistent with the Avalon Beach desired future character and the objectives of the C4 Zone.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2023/0466 for Alterations & Additions to existing dwelling, new pool & landscaping on land at Lot 33 DP 24563, 45 Cabarita Road, AVALON BEACH, subject to the conditions printed below:

Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA05	G	Site and Roof Plan	Watershed Architects	18/07/2023
DA06	G	Studio Plan and Deck Elevations	Watershed Architects	18/07/2023
DA07	G	Lower Ground Floor	Watershed Architects	18/07/2023
DA08	G	Ground Floor	Watershed Architects	18/07/2023
DA09	G	Section AA	Watershed Architects	18/07/2023
DA10	G	Section BB	Watershed Architects	18/07/2023
DA11	G	Section CC	Watershed Architects	18/07/2023
DA12	G	Section DD	Watershed Architects	18/07/2023
DA13	G	Section EE	Watershed Architects	18/07/2023
DA14	G	Northern Elevation	Watershed Architects	18/07/2023
DA15	G	Southern Elevation	Watershed Architects	18/07/2023
DA16	G	Eastern Elevation	Watershed Architects	18/07/2023
DA17	G	Western Elevation	Watershed Architects	18/07/2023
DA24	G	Demolition Plan - Ground Floor	Watershed Architects	18/07/2023
DA25	G	Demolition Plan - Lower Ground Floor	Watershed Architects	18/07/2023
DA26	G	Traffic Plan + Construction Zone	Watershed Architects	18/07/2023
1457	B	Landscape Plan	Nelson Thomas	11/07/2023
1457	B	Planting Plan	Nelson Thomas	11/07/2023

1457	B	Elevations	Nelson Thomas	11/07/2023
Storm-1	A	Stormwater Management Plan	Taylor Consulting	13/04/2023
Storm-2	A	Erosion and Sediment Control Plan	Taylor Consulting	13/04/2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Geotechnical Report J4763A	A	White Geotechnical Group	24/07/2023
Waste Management Plan	-	Watershed Architects	14/04/2023
Arboricultural Impact Assessment Report	-	Blues Bros Arboriculture	13/04/2023
BASIX Certificate No.A486604	-	Building Sustainability Assessments	27/02/2023
Ecological Assessment	-	Peter Stricker	26/06/2023

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

2. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifier for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work

relates (not being the Council) has given the Council written notice of the following information:

- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

3. General Requirements

- (a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

 - 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,
 - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the following is required:
 - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
 - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

FEES / CHARGES / CONTRIBUTIONS

4. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$24,046.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental

Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$2,404,600.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

5. **Security Bond**

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifier prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.northernbeaches.nsw.gov.au).

Reason: To ensure adequate protection of Council's infrastructure.

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

6. **On Slab Landscape Works**

Details shall be submitted to the Principal Certifier prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided. Landscape treatment details shall be submitted to the Principal Certifier prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, and services connections.

The following soil depths are required to support landscaping:

- i) 300mm for groundcovers, perennials, grasses,
- ii) 600mm for shrubs.

Design certification shall be submitted to the Certifier by a qualified Structural Engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

Reason: To ensure appropriate soil depth for planting and secure waterproofing and drainage is installed.

7. **No Clearing of Vegetation**

Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to issue of Construction Certificate.

Reason: To protect native vegetation.

8. **Stormwater Disposal**

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's Water Management for Development Policy. Stormwater shall be conveyed from the site to a level spreader in accordance with the Stormwater Management Plan by Taylor Consulting dated 13.04.2023. Details by an appropriately qualified and practicing Civil or Hydraulic Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with Council's policy are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal of stormwater management arising from the development.

9. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by White Geotechnical Group dated 24 July 2023 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

10. **Compliance with Standards**

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards.

11. Construction Traffic Management Plan

A Construction Traffic Management Plan (CTMP) and report shall be prepared by a Transport for NSW accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed.
- Where access is required across private property not in the direct ownership of the proponent, such as a private road/driveway, community title road or right of way, the CTMP is to include:
 - Evidence of the legal right to use the access route or provide owners consent from the owners/strata/community association.
 - Demonstrate that direct access from a public space/road is not viable for each stage of works.
 - Unless owner/strata/community associations consent is obtained, vehicles are not to exceed 24 tonnes or 7.5 metres in length (an assessment must be undertaken that the surface is capable of supporting up to 24 tonnes, otherwise the weight limit should be reduced in the CTMP). If consent is obtained, a copy must be included in the CTMP,
 - No materials or plant are to be located or parked in the private road/driveway, community title road or right of way
 - How any disruption to other users of the private road/driveway, community title road or right of way will be minimised and all users kept informed of likely disruption where the access will be closed or blocked for any given time.
 - A Dilapidation report, including photographic surveys, of the private road/driveway/right of way must be included prior to any works commencing on the site. The report must detail the physical condition of the private road/driveway/right of way, and any other adjacent private property assets or adjacent public property that may be adversely affected by vehicles servicing the development site to undertake works or activity during site works.
 - A requirement for Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, to be submitted after the completion of works and prior to the Occupation certificate. The report must:
 - Compare the post-construction report with the pre-construction report,
 - Clearly identify any recent damage or change to the private road/driveway/right of way and whether or not it is likely to be the result of the development works,
 - Should any damage have occurred, identify remediation actions taken.
 - Be submitted to Council with the Occupation Certificate.

- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- Proposed protection for Council and adjoining properties
- The location and operation of any on site crane

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council's Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

A copy of the approved CTMP must be kept on-site at all times while work is being carried out.

The development is to be undertaken in accordance with the Construction Traffic Management Plan approved by Northern Beaches Council Traffic Team.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

12. Pre-Construction Dilapidation Report

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifier prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Properties: **43A and 49 Cabarita Road, Avalon**

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifier and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifier must be satisfied that the requirements of this condition have been met prior to commencement of any works. If access is denied, then no dilapidation report is required.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

DURING BUILDING WORK

13. Tree and Vegetation Protection

- a) Existing trees and vegetation shall be retained and protected, including:
 - i) all trees within the site not approved for removal, including trees and vegetation nominated for retention on the approved Plans,
 - ii) all trees and vegetation located on adjoining properties,
 - iii) all trees and vegetation within the road reserve.
- b) Tree protection shall be undertaken as follows:
 - i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,

- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
- ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

- c) The arboricultural works listed in a) and b) are undertaken and certified by an Arborist/Project Arborist as compliant to AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

14. **Condition of Trees**

During the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to or by seeking arboricultural advice from an Arborist with minimum AQF Level 5 in arboriculture during the works.

In this regard all protected trees shall not exhibit:

- i) a general decline in health and vigour,
- ii) damaged, crushed or dying roots due to poor pruning techniques,

- iii) more than 10% loss or dieback of roots, branches and foliage,
- iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,
- v) yellowing of foliage or a thinning of the canopy untypical of its species,
- vi) an increase in the amount of deadwood not associated with normal growth,
- vii) an increase in kino or gum exudation,
- viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
- ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of trees.

15. Wildlife Protection

If construction activity associated with this development results in injury or displacement of a native mammal, bird, reptile or amphibian, a licensed wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

16. Protection of Habitat Features

All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed during the construction works, except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

17. Road Reserve

The applicant shall ensure the public footways and roadways adjacent to the site are maintained in a safe condition at all times during the course of the work.

Reason: Public safety.

18. Removing, Handling and Disposing of Asbestos

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- o Work Health and Safety Act;
- o Work Health and Safety Regulation;
- o Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- o Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998)];
- o Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- o The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

19. Implementation of Construction Traffic Management Plan

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate TfNSW accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent.

20. Survey Certificate

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier when the external structure of the building is complete.

Reason: To demonstrate the proposal complies with the approved plans.

21. Waste Management During Development

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

Details demonstrating compliance must be submitted to the Principal Certifier.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

22. Landscape Completion

Landscape works are to be implemented in accordance with the approved Landscape Plan(s) (by Nelson Thomas dated 11/07/23), and inclusive of the following conditions:

- a) landscape works are to be contained within the legal property boundaries,
- b) all *Elaeocarpus reticulatus* and *Tristanopsis laurina* shall be a minimum pre-ordered planting size of 75 litres; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries,
- c) all trees shall meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered

- until established; and located either within garden bed or within a prepared bed within lawn,
- d) tree, shrub and groundcover planting shall be installed as indicated on the approved Landscape Plan(s),
 - e) mass planting shall be installed at minimum 1 metre intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,
 - f) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces,
 - g) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone,
 - h) substitute all *Pennisetum* species with a suitable alternative (although a cultivar is proposed, Council deems this species an environmental threat).

Prior to the issue of an Occupation Certificate, details (from a landscape architect, landscape designer or qualified horticulturalist) shall be submitted to the Principal Certifier, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

23. Condition of Retained Vegetation

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist/Project Arborist with minimum AQF Level 5 qualifications in arboriculture shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees required to be retained on the approved Plans or as listed in the Arboricultural Impact Assessment, including the following information:

- a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
- b) extent of damage sustained by vegetation as a result of the construction works,
- c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree and vegetation protection.

24. No Weeds Imported On To The Site

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan) are to be imported on to the site prior to or during construction works.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To reduce the risk of site works contributing to spread of Priority and environmental weeds.

25. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development.

26. **Post-Construction Dilapidation Report**

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To maintain proper records in relation to the proposed development.

27. **Waste Management Confirmation**

Prior to the issue of an Occupation Certificate, evidence / documentation must be submitted to the Principal Certifier that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

28. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**

The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), and Civil Engineers' certification.

The Applicant shall create on the Title a restriction on the use of land and a positive covenant in respect to the ongoing maintenance and restriction of the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

29. **Geotechnical Certification Prior to Occupation Certificate**

The Applicant is to submit the completed Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) to the Principal Certifier prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

30. **Swimming Pool Requirements**

The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009;
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifier, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

(g) Swimming pools and spas must be registered with the *Division of Local Government*.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To protect human life.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

31. **Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of

planting. If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan(s) and any conditions of consent.

A maintenance activity schedule for on-going maintenance of planters on slab shall be incorporated to monitor and replenish soil levels as a result of soil shrinkage over time.

The approved landscaped area shall in perpetuity remain as planting under the development consent.

Reason: To maintain local environmental amenity.

32. **Swimming Pool/Spa Motor Noise**

The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.

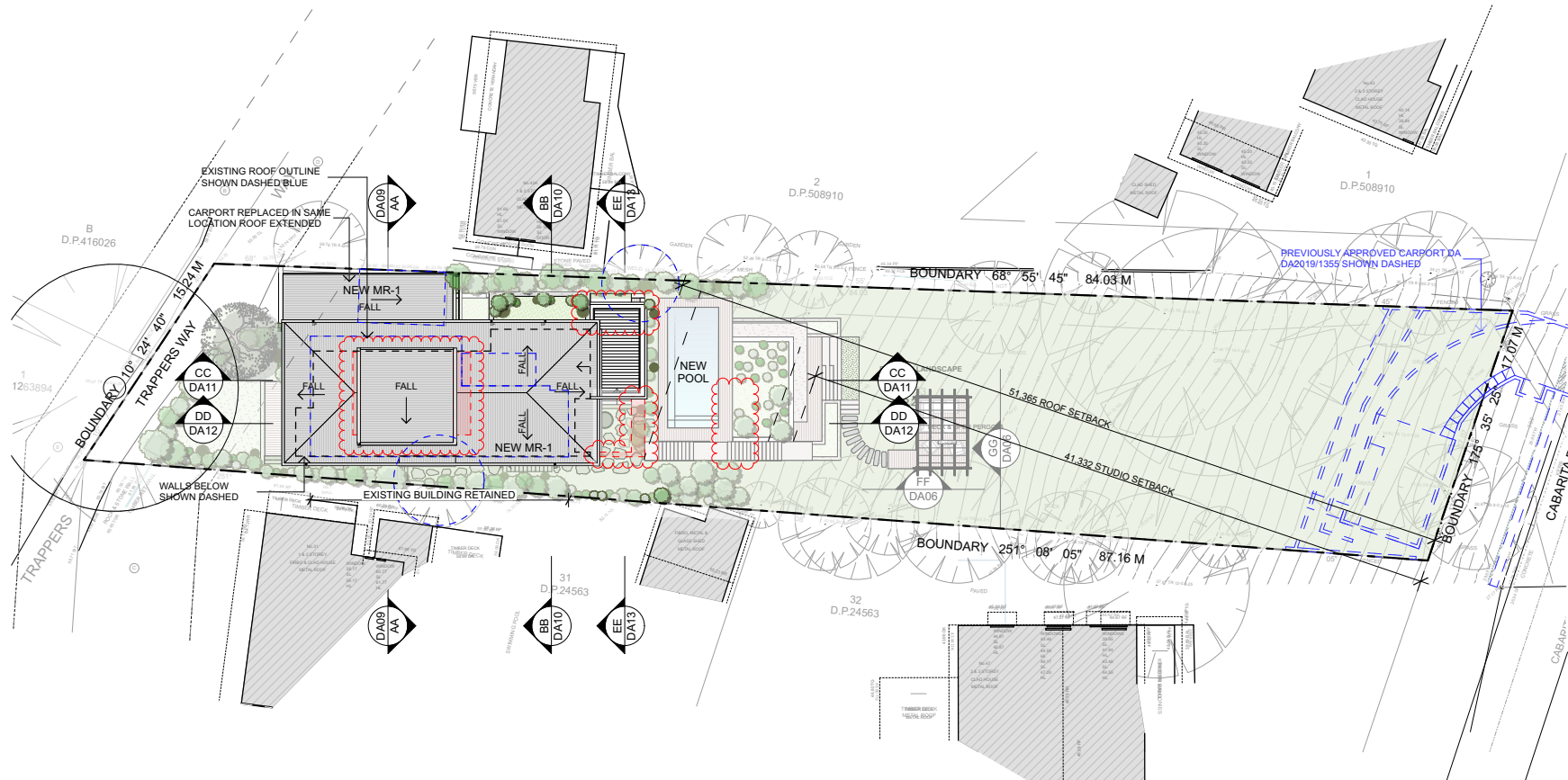
33. **No Approval for Secondary Dwelling**

No approval is granted or implied under this Development Consent for the use of any part of the dwelling house for the purpose of a secondary dwelling or separate occupancy. Built in cooking facilities are not permitted to be installed, other than those shown in the designated kitchen area.

Reason: To ensure compliance with the terms of this consent.

WALL LEGEND

- EXISTING WALL / FLOOR / CEILING
- NEW WALL / FLOOR / CEILING
- TO BE DEMOLISHED
- DA AMENDMENTS



Watershed\Architects

Nominated Architect Mark Korgul No. 6221 Studio 9977 1076 Address Level 1, 167 Pitwater Road Manly NSW 2096



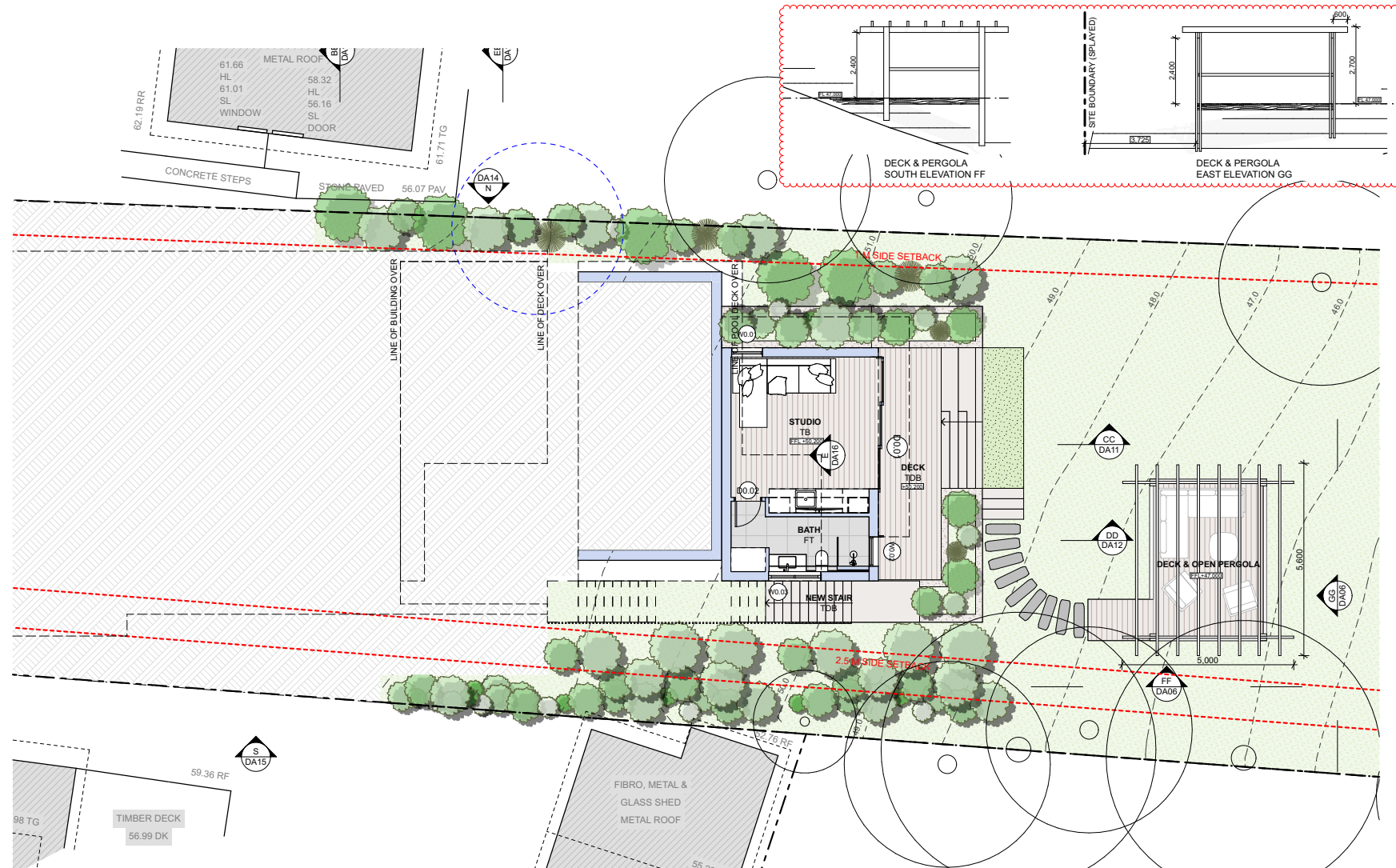
ISSUE FOR
E DA Issue
F DA Issue Amended
G DA Issue Amended

DATE
5/5/23
30/6/23
18/7/23

JOB NO: 21014
ADDRESS: 33 Trappers Way/45 Cabarita Road Avalon NSW 2107
CLIENT: Claire Reid
SCALE: 1:250 @ A3

SITE & ROOF PLAN

SHEET: DA05
ISSUE: G



Watershed\Architects

Nominated Architect Mark Korgul No. 6221 Studio 9977 1076 Address Level 1, 167 Pitwater Road Manly NSW 2036



ISSUE FOR
E DA Issue
F DA Issue Amended
G DA Issue Amended

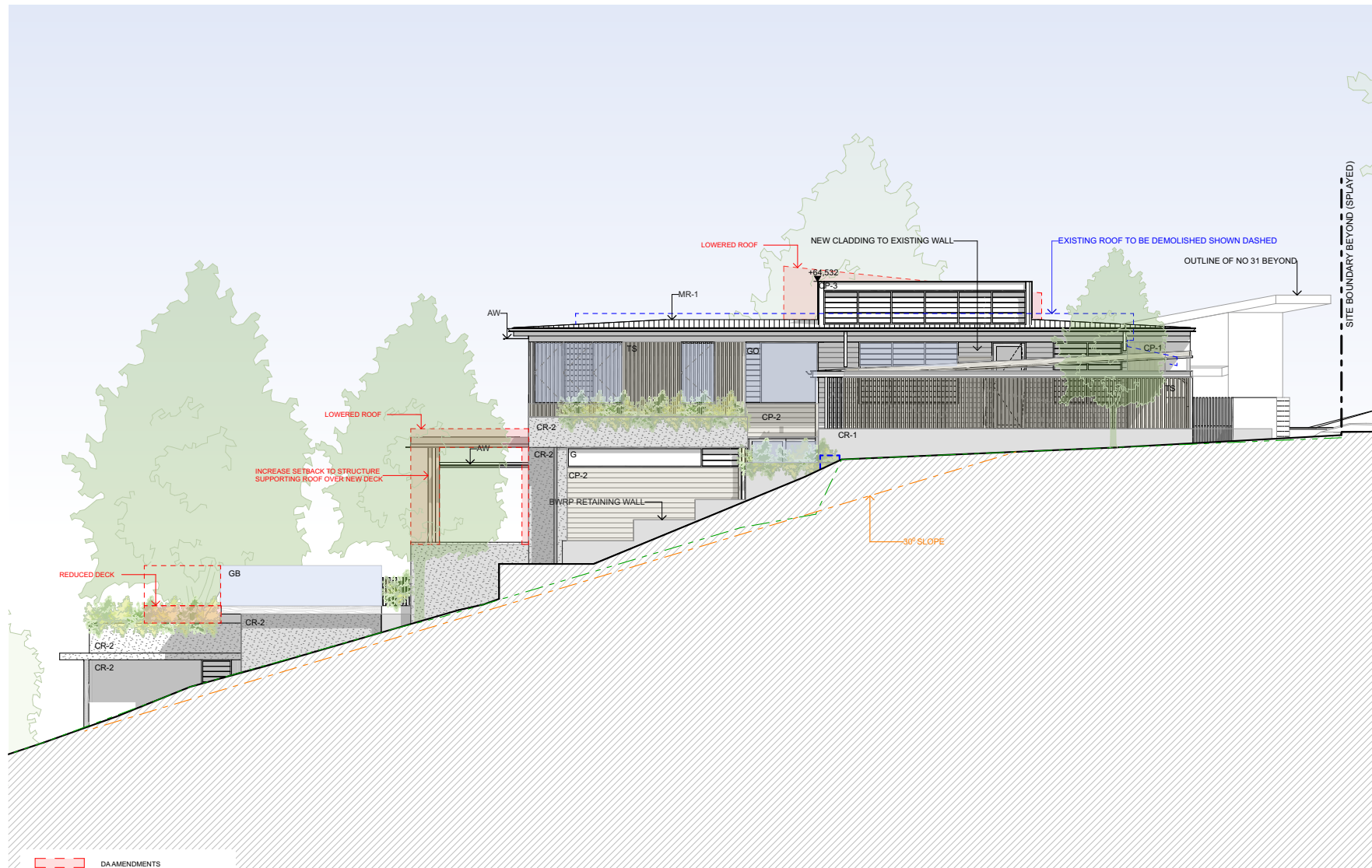
DATE
5/5/23
30/6/23
18/7/23

JOB NO: 21014
ADDRESS: 33 Trappers Way/45 Cabarita Road Avalon NSW 2107
CLIENT: Claire Reid
SCALE: 1:100, 1:115.57 @ A3

STUDIO PLAN & DECK ELEVATIONS

SHEET: DA06

ISSUE: G



Watershed\Architects

Nominated Architect Mark Korgul No. 6221 Studio 9977 1076 Address Level 1, 167 Pitwater Road Manly NSW 2096



ISSUE FOR
E DA Issue
F DA Issue Amended
G DA Issue Amended

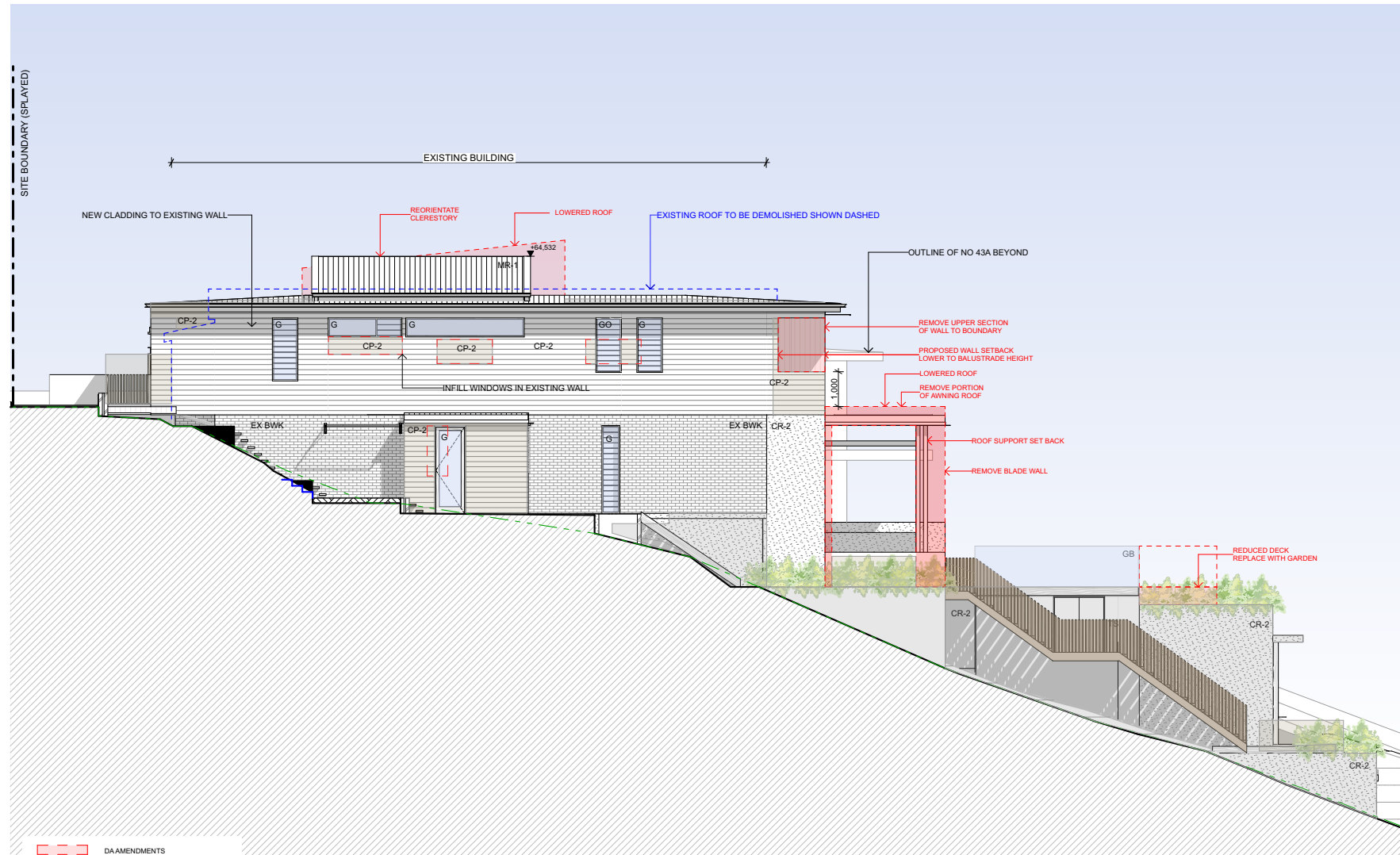
DATE
5/5/23
30/6/23
18/7/23

JOB NO: 21014
ADDRESS: 33 Trappers Way/45 Cabarita Road Avalon NSW 2107
CLIENT: Claire Reid
SCALE: 1:100 @ A3

NORTHERN ELEVATION

SHEET: DA14

ISSUE: G



DA AMENDMENTS

Watershed\Architects

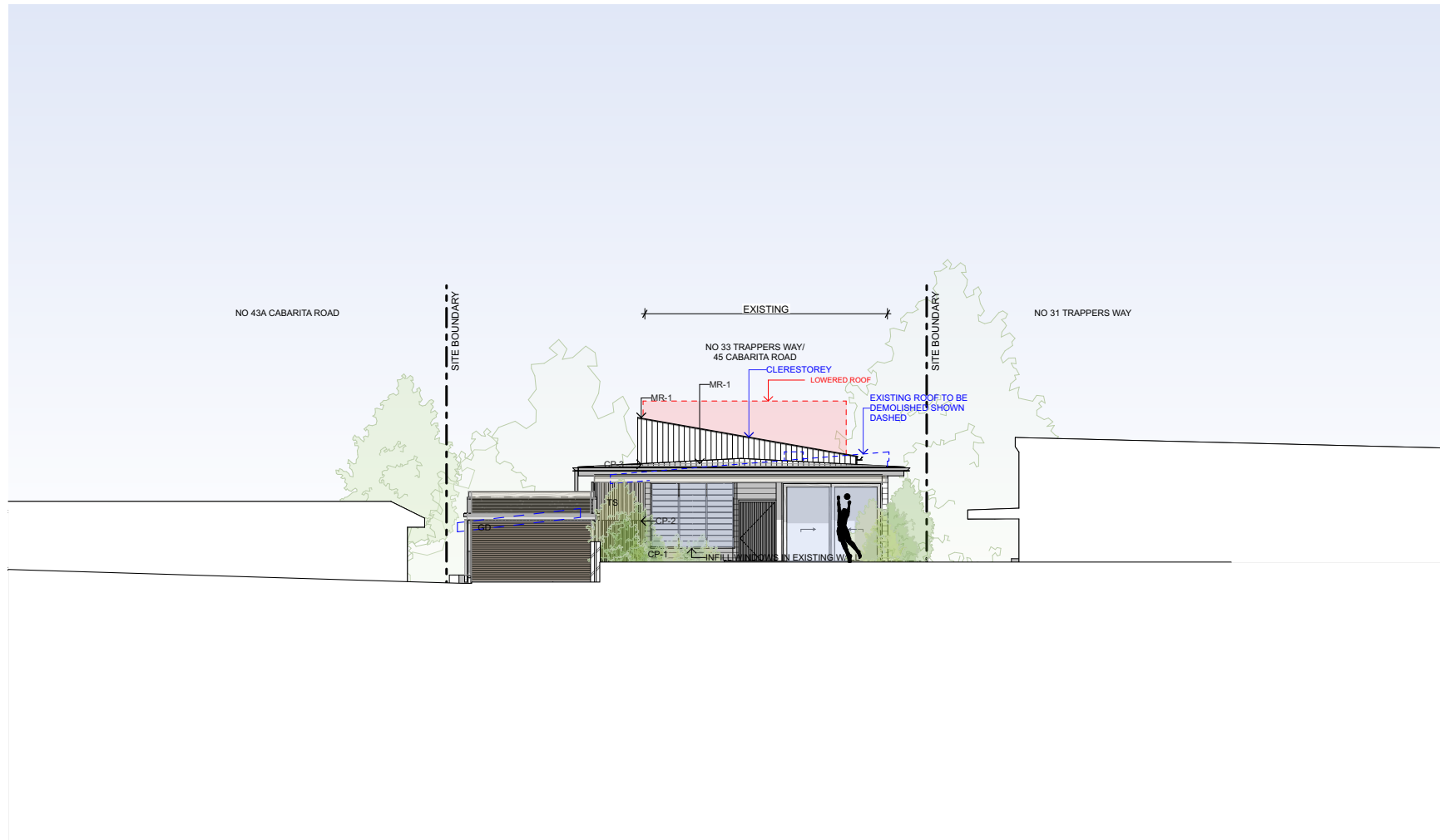
Nominated Architect Mark Korgul No. 6221 Studio 9977 1076 Address Level 1, 167 Pittwater Road Manly NSW 2096

ISSUE FOR DATE
G DA Issue Amended 18/7/23
File name: 230712 - 33 Trappers Way, Avalon DA Issue G.pln
Print date & time: 1/8/23 @ 3:33 pm

JOB NO: 21014
ADDRESS: 33 Trappers Way/45 Cabarita Road
CLIENT: Avalon NSW 2107
Claire Reid
SCALE: 1:100 @ A3

SOUTHERN ELEVATION
SHEET: DA15
ISSUE: G





DA AMENDMENTS

Watershed\Architects

Nominated Architect Mark Korgul No. 6221 Studio 9977 1076 Address Level 1, 167 Pitwater Road Manly NSW 2096



ISSUE FOR
E DA Issue
F DA Issue Amended
G DA Issue Amended

DATE
5/5/23
30/6/23
18/7/23

JOB NO: 21014
ADDRESS: 33 Trappers Way/45 Cabarita Road Avalon NSW 2107
CLIENT: Claire Reid
SCALE: 1:100 @ A3

WESTERN ELEVATION

SHEET: DA17

ISSUE: G

ITEM 4.2

DA2022/1250 - LOT 305/ COONAWARRA ROAD, TERREY HILLS - DEMOLITION OF OUTBUILDINGS AND CONSTRUCTION OF A DWELLING-HOUSE, INCLUDING A SWIMMING POOL/SPA, POOL PAVILION/POOL HOUSE, TENNIS COURT, SHED AND ENTRY GATES, WITH ASSOCIATED TREE REMOVAL AND LANDSCAPING

AUTHORISING MANAGER Steve Findlay
TRIM FILE REF 2023/572997
ATTACHMENTS
1 [↓ Assessment Report](#)
2 [↓ Site Plan & Elevations](#)
3 [↓ Clause 4.6](#)

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is the subject of 10 or more unique submissions by way of objection and the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of WLEP 2011 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2022/1250 for demolition of outbuildings and construction of a dwelling-house, including a swimming pool/spa, pool pavilion/pool house, tennis court, shed and entry gates, with associated tree removal and landscaping on land at Lot 305 DP 752017, 305 / 0 Coonawarra Road, TERREY HILLS subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1250
Responsible Officer:	Jordan Davies
Land to be developed (Address):	Lot 305 DP 752017, 305 / 0 Coonawarra Road TERREY HILLS NSW 2084
Proposed Development:	Demolition of outbuildings and construction of a dwelling-house, including a swimming pool/spa, pool pavilion/pool house, tennis court, shed and entry gates, with associated tree removal and landscaping
Zoning:	Warringah LEP2011 - Land Zoned RU4 Primary Production Small Lots
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Dajing Li
Applicant:	Cadence & Co Pty Ltd
Application Lodged:	02/08/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	29/05/2023 to 12/06/2023
Advertised:	Not Advertised
Submissions Received:	13
Clause 4.6 Variation:	4.3 Height of buildings: 5.52%
Recommendation:	Approval
Estimated Cost of Works:	\$ 7,435,000.00

EXECUTIVE SUMMARY

This development application seeks consent for construction of a dwelling house including swimming pool and tennis court. The application (as amended) proposes removal of 138 trees from the site (out of an existing 292 identified within the arborist report).

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to receiving more than 10 submissions (14 submissions in total were received, across two (2) notification periods).

Concerns raised in the submissions predominantly relate to the number of trees to be removed on the site, biodiversity impacts, the bulk and scale of the dwelling house, character of the area and location of equine facilities (horse paddocks and a horse arena). The initial application proposed the removal of 252 trees (out of 292 trees) which the landscape and biodiversity sections of Council did not support. The application was amended a number of times to reduce the extent of the building footprint and reduce the amount of trees for removal as part of the required Asset Protection Zones to satisfy the bushfire provisions. The number of trees to be removed has been reduced to 138. Whilst this still appears to be a relatively high number, it is a function of a proposal for a new dwelling on a property that is well vegetated and has not been previously developed for residential use.

The horse paddocks and horse arena have been deleted from the proposal, which has allowed additional trees to be retained and a native buffer to be maintained around the perimeter of the site, including restoration and enhancement of native bushland within the northern and western setback areas, as required by the submitted Vegetation Management Plan.

Critical assessment issues include; the removal and management of native vegetation, the building height breach (with a portion of the pitched roof form breaching the 8.5m height limit by 5.52%) and the proposals response to the character of the RU4 Zone locality statement. Each of these issues are addressed in detail within this report, including detailed comments from Council's Biodiversity and Landscape teams, who have assessed the impacts associated with the significant tree removal.

The Clause 4.6 request in relation to the non-compliance with the building height standard arises from a minor portion of a pitched roof form breaching the 8.5m height limit (5.52% breach), which is partially due to the slope of the land and the architectural style of the building, which provides for three pavilion roof forms. The breach is addressed within the Clause 4.6 assessment within the body of this report and is supported on merit.

The proposal in its amended form has addressed Council's issues in relation to tree removal and biodiversity through the reduction in the extent of new structures and site disturbance, particularly around the site's perimeter, and the implementation of a Vegetation Management Plan to require the restoration and maintenance of 8,500m² of site area.

This report concludes with a recommendation that the NBLPP should grant APPROVAL to the development application, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development comprises the construction of a new dwelling and ancillary structures.

Specifically, the proposal consists of:

- Removal of existing structures on the site
- Part 2/part 3 storey dwelling house and an eight (8) car garage
- Swimming pool and associated cabana
- Tennis court and tennis court lighting
- Shed (200m²) with vehicle turning area
- Two (2) vehicle access driveways off Coonawarra Road
- Removal of 138 trees (out of a total of 296 trees on the site), the tree removal inclusive of the asset protection zones required for bushfire management

- Landscaping and replacement tree planting throughout the site as established in the Vegetation Management Plan

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Local Environmental Plan 2011 - 6.2 Earthworks
Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land
Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - D13 Front Fences and Front Walls
Warringah Development Control Plan - D17 Tennis Courts
Warringah Development Control Plan - E1 Preservation of Trees or Bushland Vegetation
Warringah Development Control Plan - E2 Prescribed Vegetation
Warringah Development Control Plan - E5 Native Vegetation
Warringah Development Control Plan - E6 Retaining unique environmental features

SITE DESCRIPTION

Property Description:	Lot 305 DP 752017 , 305 / 0 Coonawarra Road TERREY HILLS NSW 2084
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern and western side of Coonawarra Road. The site is located upon a corner, sharing two common boundaries to the north and west with other residential/rural properties.</p> <p>The site is regular in shape with a frontage of 132.43m along the southern road boundary, a frontage of 121.37m along the eastern road boundary and a depth of 147m. The</p>

site has a surveyed area of 2.175 hectares.

The site is located within the RU4 Primary Production Small Lots zone and consists of some small outbuildings being sheds, and some shipping containers. The site has a lot of native vegetation scattered across the site, including locally native canopy trees, low lying grasses and shrubs, with the canopy trees being in varying states of health. The biodiversity report notes the vegetation community as 'Northern Sydney Scribbly Gum Woodland'.

The biodiversity assessment report submitted with the application briefly describes this historical state of the site:

"Approximately 80% of vegetation on the site has been previously disturbed. Prior to 1993 the vegetation on site was likely left unmanaged (see Figure 1.2a). The site was cleared of almost all vegetation between 1994 and 1996 (see Figure 1.2b). Since then, scattered native canopy appears to have been retained, whilst the understory and cleared areas underwent continued disturbance. The site has been managed as mixed use industrial and materials storage for several years." - Extract from Ecological Consultants report dated May 2023.

The arborist reports there to be a 296 trees identified on the site.

The site has moderate fall towards the north-western corner of the site, with the high point of the site being the south-eastern corner.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by detached dwelling houses on large rural allotments. The adjoining site to the north and west both consist of detached dwelling houses. Across the road to the south are detached dwelling house with outbuildings, including horse paddocks and equine facilities.

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time.

A search of Council's records has revealed the following relevant history with regard to applications:

- **DA2016/0160** - Construction of a New Dwelling, swimming pool & spa, earthworks and driveway - Approved by Warringah Council on 17 May 2016, the consent to lapse on 17 May 2021. It is noted that this consent was not activated and has now since lapsed (including any extension to the consent provided by during the prescribed period during COVID).

Current Application

On 4 November 2022, Council wrote to the applicant requesting additional information (RFI) and amendments following an initial assessment by Council, including review of the public submissions received. In particular Council raised concern regarding the significant amount of tree removal proposed.

On 13 February 2023, the applicant provided additional supporting documents and amended plans responding to Council's RFI request.

On 27 March 2023, Council wrote to the applicant advising that the amended plans and additional information did not adequately respond to Council's concerns. Council's advice was that the extent of tree removal must be reduced even further and biodiversity issues addressed.

On 22 May 2023, Council received amended plans which removed all of the equine structures, which included removal of the horse paddocks around the sites perimeter, removal of the horse arena and removal of the stables. The application was also accompanied by an updated Bushfire Report (increasing the BAL level to BAL 29) and reduction in bushfire asset protection zones and provided a Vegetation Management Plan. Updated landscape plans were also provided.

On 24 May 2023, Council re-notified the amended plans for a two week period, with the notification period being between 29 May and 12 June 2023.

On 28 July 2023, Council received further amended plans limiting the extent of tree removal within the APZ (with the exception of trees identified to be removed for safety reasons), an updated Vegetation Management Plan and Biodiversity Report following a request from Council's Biodiversity and Landscape Team.

The application was not required to be further notified in accordance with the Community Participation Plan, as the changes resulted in a lesser environmental impact.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended plans to reduce the footprint of development, wastewater, stormwater, tree removal, biodiversity and bushfire. Amended plans and information has been provided which has been considered as part of this assessment.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p>

Section 4.15 Matters for Consideration	Comments
	<p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application that included a certificate (prepared by Ian

Tyerman, dated 18/05/2023) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 29/05/2023 to 12/06/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 13 submission/s from:

Name:	Address:
Ms Sally Louise White	207 Tooronga Road TERREY HILLS NSW 2084
Mrs Barbara Anne Gooch	17 Cooyong Road TERREY HILLS NSW 2084
Mrs Sally Ann Barker Stephen Barker	19 Cooyong Road TERREY HILLS NSW 2084
Mr Norman Patrick Emerson	3 Coonawarra Road TERREY HILLS NSW 2084
Mr Paul Hermon Slade	Po Box 890 MONA VALE NSW 1660
Mrs Clarissa Maria Tebbatt	40 Cooyong Road TERREY HILLS NSW 2084
Mrs Jeanette Grellinger	64 Cooyong Road TERREY HILLS NSW 2084
Mr David Charles Hamlyn Harris	313 Weemala Road DUFFYS FOREST NSW 2084
Trevor John Gourlay	22 The Greenway DUFFYS FOREST NSW 2084
Mrs Julie Sharon Tayles	2 Larool Road TERREY HILLS NSW 2084
Richard Lee Smallwood	311 Weemala Road TERREY HILLS NSW 2084
Christine Asmar	65 Ross Street GLEBE NSW 2037
Mrs Judith Ann Fenn	12 Birramal Road DUFFYS FOREST NSW 2084

First Notification

The application was notified for a period of 14 days between 8/08/2022 and 25/08/2022. During the first notification, 13 submissions were received objecting to the proposal.

Second Notification

Following receipt of amended plans and documents (which reduced the footprint of the development and reduced the extent of tree removal to 138 trees, instead of 252 trees), the application was re-notified for 14 days between 29 May 2023 and 12 June 2023. During this notification period, three (3) submissions were received (two (2) of which were from the same properties who firstly objected).

This resulted in a total of 14 unique submissions, across the two notification periods.

Following the second notification period, further documentation and plans were submitted at the request of Council to clarify the trees to be retained outside the APZ and included a Vegetation Management Plan for the northern and western setback zones over an area of 8,500m². The documents clarified that tree removal was limited to the development footprint and the 36m asset protection zone required for bushfire protection (with Trees 81, 92, 99 and 114 identified as a priority for removal due to safety reasons).

Community Participation Plan

The application was not required to be further notified given the reduction the changes represent a reduced impact, which is in accordance with Council's Community Participation Plan.

Issues to be Addressed

The following issues were raised in the submissions:

- Stormwater and drainage overflow impacts for the adjoining properties.
- Amenity impacts to the northern properties from noise, lighting, dust and privacy due to the location of the horse area and tree removal.
- Concerns about management of waste-water and proximity of waste-water areas to the western boundary.
- Sediment and erosion control for the site.
- Height of the development should be reduced.
- Wall height non-compliance under the DCP.
- Objection to the impact to native vegetation and tree loss. Impact to native wildlife and biodiversity impact. The proposal results in the removal of 252 trees out of 296 identified in the arborist report.
- Bulk and scale of the buildings and number of structures and horse paddocks associated with the proposal.
- Inconsistent with the character of the locality and impact to rural and scenic character.
- Extensive cut and fill.
- Inconsistent with the zone objectives.
- Potential impacts to aboriginal heritage. Aboriginal Heritage Report states there are no scar trees, yet the biodiversity report identifies a tree with a scar.

The above issues are addressed as follows:

- **Stormwater and drainage overflow impacts for the adjoining properties.**

Comment: Council's Development Engineers requested additional information in relation to stormwater management and the direction of stormwater flows to the Coonawarra Road frontage. Following the additional information being provided, Council's Engineers are satisfied with the stormwater management for the proposal, subject to conditions of consent.

- **Amenity impacts to the northern properties from noise, lighting, dust and privacy due to the location of the horse area and tree removal.**

Comment: The horse arena, paddocks and stables located to the north of the dwelling have been deleted from the proposal. The area to the north of the dwelling (outside the asset protection zone) is to be managed in accordance with the submitted Vegetation Management Plan. This issue is resolved via the amended proposal.

- **Concerns about management of waste-water and proximity of waste-water areas to the western boundary.**

Comment: The location of the waste-water dispersion area has been relocated to the south-

eastern corner of the site (adjoining the road) and outside the area of the VMP. Council's EHO has reviewed the amended wastewater report and is supportive of the proposal, subject to conditions. This issue is resolved via the amended proposal.

- **Sediment and erosion control for the site.**

Comment: The deletion of the horse paddocks and horse arena, along with the reduction of site disturbance improves the overall sediment and erosion control for the site for the amended proposal and results in an acceptable outcome. Conditions will be recommended for construction management.

- **Height of the development should be reduced.**

Comment: The breach of the building height resulting from a pitched roof element is addressed under the Clause 4.6 assessment later in this report. Council's assessment has found that the minor breach can be supported and the Clause 4.6 request has addressed the height breach in accordance with the requirements of Clause 4.6 of the WLEP 2011.

- **Wall height non-compliance under the DCP.**

Comment: The non-compliance is addressed later within this report under Clause B1 of the WDCP 2011. The non-compliance is supported on merit and would not be a reason to refuse the application.

- **Objection to the impact to native vegetation and tree loss. Impact to native wildlife and biodiversity impact. The proposal results in the removal of 252 trees out of 296 identified in the arborist report.**

Comment: The proposal as originally submitted involved a much more significant impact on native vegetation and a footprint which covered a larger proportion of the site, as it included a horse arena, numerous horse paddocks, stables and additional parking areas. The proposal also relied on a lower BAL rating for bushfire protection, which required a larger asset protection zone (APZ). This resulted in the removal of 252 trees out of the identified 296 trees in the Arborist Report. This was not supported by Council and the applicant was advised to amend the proposal.

The application was amended to remove the horse arena, horse stables, horse paddocks, additional parking and increase the BAL rating which in turn, reduced the size of the required APZ. The tree removal is now limited to the main building footprints and the required 36m APZ to comply with *Planning for Bushfire Protection* (with the exception of 4 trees which are identified to be removed for safety reasons). The number of trees required to be removed is now 138 trees. Whilst this is still a relatively high number of trees, it is a function of the fact that the property has not previously been developed for residential use.

The application is accompanied by a Vegetation Management Plan (VMP) which has identified the northern and western portions of the site (8,500m² in area) to be restored and managed. The VMP proposes compensatory planting at a minimum average density of one (1) new tree per 20m². Tree protection measures and tree retention for the remainder of the site will be in accordance with the submitted Arborist Report. It is important to note that this site is not virgin bushland and has had some level of disturbance over the years, as identified within the submitted Biodiversity Report, which includes an assessment of the site history. The intention of the VMP is to restore and manage the portions of the site with the higher levels of

biodiversity value and restore those areas of the site outside of the development footprint and APZ.

To ensure the ongoing protection and enhancement of vegetation within the VMP area, Council's Biodiversity Team have recommended a condition requiring a Section 88E covenant to be applied to the retained areas within the northern and western setbacks subject to the VMP. This will support the protection and conservation of the threatened orchid species (*Microtis angusii*) identified on site, and offset the proposed tree removal required for the proposal.

In addition to the proposed revegetation measures outlined in the VMP, the Biodiversity Development Assessment Report (BDAR), dated July 2023 has assessed the impacts and prescribed a biodiversity offset credit obligation comprising 10 ecosystem credits and 20 species credits. This is appropriate to be conditioned.

Following the amendments to the proposal, Council's Biodiversity Team and Landscape Team have reached a level of satisfaction with regard to tree removal and biodiversity impacts. See detailed comments within the Biodiversity and Landscape Referral comments later in this report.

- **Bulk and scale of the buildings and number of structures and horse paddocks associated with the proposal.**

Comment: The bulk and scale of the building is assessed under the Clause 4.6 variation assessment. Whilst it is acknowledged that the dwelling house is quite large, the spatial separation and retained landscaping between the buildings and the boundaries is sufficient to ameliorate direct visual impact from the adjoining properties and the public road. The amended proposal reduces the extent of development, including the removal of the horse paddocks and horse arena.

- **Inconsistent with the character of the locality and impact to rural and scenic character**

Comment: Following the amendment to the proposal and increased tree retention, the proposal is now considered compatible with the rural and scenic character. It is not uncommon for large dwellings to be located in Terry Hills due to the larger lots which afford greater spatial separation to mitigate direct visual impacts. Compliant setbacks have been achieved and bushland is retained and restored to an appropriate level to maintain the rural character.

- **Extensive cut and fill.**

Comment: The deletion of the horse arena and horse paddocks have reduced the extent and magnitude of the cut and fill required for the development across the site. The cut and fill is now located within the dwelling footprint, tennis court and pool. The perimeter of the site will be largely undisturbed and comprise of retained trees/bushland.

- **Inconsistent with the zone objectives.**

Comment: An assessment against the zone objectives has been undertaken within the Clause 4.6 assessment and the amended proposal is now considered to meet the zone objectives.

- **Potential impacts to aboriginal heritage. Aboriginal Heritage Report states there are no scar trees, yet the biodiversity report identifies a tree with a scar.**

Comment: A referral has been carried out to the Aboriginal Heritage Office who has reviewed the requested Aboriginal Due Diligence Assessment. Council's Aboriginal Heritage Office advise that there are no known heritage items within the site and the site has a low potential for Aboriginal heritage upon review of the Due Diligence Assessment. Upon review of the Biodiversity Report, the Aboriginal Heritage Office has advised that the 'scar tree' which is identified within the Biodiversity Report is not of aboriginal heritage significance. They have noted the particular tree has a narrow trunk and is likely to be a younger tree or a young new stem. As such, the Aboriginal Heritage Office are satisfied this is not 'Scar Tree' within the meaning of aboriginal heritage.

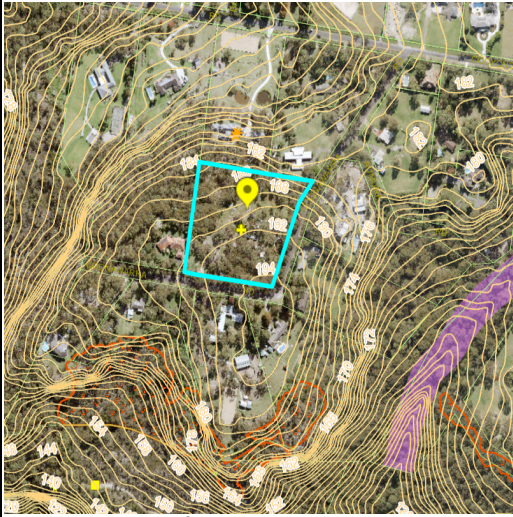
Conditions have been imposed to account for any unexpected finds or unidentified artifacts.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Industrial)	Supported subject to conditions Conditions applied for tennis court lighting.
Environmental Health (Unsewered Lands)	Supported subject to conditions General Comments woodfire heater appears on amended plans as Gas NFA Plans now appear consistent Conditions recommended Recommendation APPROVAL - subject to conditions
Landscape Officer	Supported subject to conditions <u>Amended Plans Comment 04/08/2023</u> Further amended Architectural Plans, Landscape Plans and Vegetation Management Plan are noted. The comments and conditions of Council's Bushland and Biodiversity section are also noted. The amendments have clarified proposed works and provide improved landscape outcomes over the site to a point whereby the the proposal is considered satisfactory with regard to previous issues raised and can be supported with conditions.

Internal Referral Body	Comments
	<p><u>Amended Plans Comment -30/03/2023</u></p> <p>Amended Site Plan Issue 2 dated 23/01/23 is noted.</p> <p>The plan provides an improved landscape outcome relative to the originally submitted site plan. The following amendments are noted:</p> <ul style="list-style-type: none"> • Amended site plan and recommendations of the Biodiversity Assessment provide for an improved integrated environmental outcome. • Additional trees retained • Additional regeneration areas provided • No. of paddocks reduced <p>However, with reference to the relevant Planning Controls detailed in earlier comments below, the site is environmentally sensitive and further work is required to address the many controls applicable to the site.</p> <p>It is considered that the layout of the proposed development could be make better use of the available land and provide an outcome that better addresses the site's unique environmental features and enhancement of the natural landscape whilst still accommodating the proposed facilities and usage of the site.</p> <p>The development as a whole could be drawn further toward to centre of the site to provide a better integration with the natural landscape at the edges, with regeneration areas increased along the boundaries, particularly the north-west and south-east corners of the site.</p> <p>It is recognised that the Site Plan does not provide details as to landscape treatments and that these would be reflected in the amended landscape plans, not currently before Council. Of particular interest is the landscape/environmental outcome that can be achieved in conjunction with the bushfire requirements, which is indicated in the Bushfire Report to be an Inner Protection Area across the entirety of the site.</p> <p>Inner Protection Zone management does not preclude the presence of native bushland, but rather requires numeric compliance with the extent of trees, shrubs and groundcovers to be maintained across the site. Of particular interest is the actual amount of tree removal required to enable compliance with the bushfire requirements.</p> <p>In order for the proposal to be assessed and potentially supported, the following additional information is required:</p> <ul style="list-style-type: none"> • Co-ordination of Arborist's Report, Bushfire Report requirements and Landscape Plan to provide a plan that nominates and identifies what trees that can be retained, need to be removed and are able to be planted.

Internal Referral Body	Comments
	<ul style="list-style-type: none"> Amended Landscape Plans detailing location and proposed treatments of formal landscape areas. Increase the percentage of the site to be managed as natural areas in accordance with techniques identified in the Biodiversity Report and Bushfire Report (i.e. a Vegetation Management Plan). <p><u>Original Comment</u></p> <p>The application seeks consent for construction of a dwelling house including swimming pool, tennis court, and equine facilities.</p> <p>The site is noted to be in the RU4 Primary Production Small Lots Zone under WLEP.</p> <p>The site is located near the top of a local rise, sloping down to the north, forming a native canopy backdrop characteristic of the locality.</p> <p>The Arborist's Report, Ecological Assessment and Landscape Plans provided with the application are noted.</p> <p>The plans indicate extensive remodelling of the site to accommodate paddocks, stables, tennis court pool and dwelling.</p> <p>The Arborist's Report indicates that 252 trees are to be removed and 27 trees are to be retained on the site.</p> <p>The majority of trees to be removed are local native species</p> <p>The Landscape Plan indicate replanting of largely exotic species with the majority of the site turfed.</p> <p>Particular concern is raised regarding the proposed perimeter treatment of the site, with narrow garden beds proposing mixed planting including: Trees: Magnolia, Michelea, Pyrus Shrubs: Camelia, Elaeagnus, Viburnum Groundcovers: Pachysandra.</p> <p>In addition to levelling required for the new dwelling and driveways, the plans indicate the following levels of proposed additional development of the land: Paddock 01 RL191.167 Paddock 02 RL 190.333 Paddock 03 RL 188.070 Paddock 04 RL 186.166 Paddock 05 RL 184.756 Paddock 06 No RL provided. Arena RL 186.380</p>

Internal Referral Body	Comments
	<p>Stable RL 187.780 Tennis Court RL 191.230</p> <p>It is considered that the proposed works are an overdevelopment of the site given the extent of tree removals proposed and the alteration to the existing ground levels proposed.</p> <p>Given the natural assets of the site, consideration should be given to retaining and enhancing areas of native vegetation, particularly in the south east of the site at the top of the hill and in the north west corner where existing vegetation is greatest.</p>  <p><i>Fig. 1 Airphoto of the subject site located on the upper slope of a natural landform.</i> <i>Majority of native vegetation located on the north west and south east portions.</i></p> <p>The following planning controls are highlighted to indicate where landscape impacts have been assessed as not meeting the requirements:</p> <p><u>Zone RU4 Primary Production Small Lots</u> 1 Objectives of zone</p> <ul style="list-style-type: none"> • To enable sustainable primary industry and other compatible land uses. • To encourage and promote diversity and employment opportunities in relation to primary industry enterprises, particularly those that require smaller lots or that are more intensive in nature. • To minimise conflict between land uses within this zone and land uses within adjoining zones. • To minimise the impact of development on long distance views of the area and on views to and from adjacent national parks and bushland.

Internal Referral Body	Comments
	<p>• To maintain and enhance the natural landscape including landform and vegetation.</p> <p>• To ensure low intensity of land use other than land uses that are primary industry enterprises.</p> <p>• To maintain the rural and scenic character of the land.</p> <p><u>E5 Native Vegetation</u> Objectives To preserve and enhance the area's amenity, whilst protecting human life and property. To improve air quality, prevent soil erosion, assist in improving water quality, carbon sequestration, storm water retention, energy conservation and noise reduction. To provide natural habitat for local wildlife, maintain natural shade profiles and provide psychological & social benefits. Promote the retention of native vegetation in parcels of a size, condition and configuration which will as far as possible enable local plant and animal communities to survive in the long term. To maintain the amount, local occurrence and diversity of native vegetation in the area</p> <p><u>E6 Retaining unique environmental features</u> Objectives • To conserve those parts of land which distinguish it from its surroundings. Requirements 1. Development is to be designed to address any distinctive environmental features of the site and on adjoining nearby land. 2. Development should respond to these features through location of structures, outlook, design and materials.</p> <p>Note Environmental features include: a) Elevated landforms, prominent coastal headlands, cliffs and rock outcrops b) Remnant bushland and trees c) Fauna habitat for rare and threatened species d) Natural watercourses Design solutions include: a) Choosing parts of the site to develop where features are not present b) Minimising on-site disturbance c) Locating buildings to take advantage of environmental features d) Utilising construction methods that limit impact on sloping/ difficult sites eg. pole construction e) Employing materials that complement the site eg. stone and timber f) Implementing a soil and water management plan to limit impact g) Avoiding the introduction of soil from outside the site</p>

Internal Referral Body	Comments
	<p>h) Selecting native plant species that are present on site, preferably seeded from species on the site</p> <p>i) Selecting plant species that enhance resident fauna habitat (see Council's tree replacement guide)</p> <p><u>E1 Preservation of Trees or Bushland Vegetation</u></p> <p>Objectives</p> <p>To protect and enhance the urban forest of the Northern Beaches.</p> <p>To effectively manage the risks that come with an established urban forest through professional management of trees.</p> <p>To minimise soil erosion and to improve air quality, water quality, carbon sequestration, storm water retention, energy conservation and noise reduction.</p> <p>To protect, enhance bushland that provides habitat for locally native plant and animal species, threatened species populations and endangered ecological communities.</p> <p>To promote the retention and planting of trees which will help enable plant and animal communities to survive in the long-term.</p> <p>To protect and enhance the scenic value and character that trees and/or bushland vegetation provide.</p> <p>Requirements for Vegetation Clearing Permits</p> <p>5. Both Development Applications and Vegetation Clearing Permits for the removal of bushland on land under the Warringah LEP 2011 must address relevant objectives and requirements of Parts E2, E3, E4, E5, E6, E7 and E8 of the Warringah DCP 2011</p> <p>Requirements for other Development Applications</p> <p>When a DA required for clearing vegetation the following requirements apply:</p> <p>Development is to be sited and designed to minimise the impact on remnant native vegetation, including canopy trees and understorey vegetation, and on remnant native ground cover species.</p> <p>Where the applicant demonstrates that no reasonable alternative design exists and a tree must be removed, suitable compensatory tree planting is required. Details including proposed species and the location of replacement planting are to be provided.</p> <p>Development must also avoid any impact on trees on public land.</p> <p>For development applications involving the construction of new buildings and works containing Classes 2-9 (BCA), the information contained in Appendix 11 is to be submitted.</p> <p>Where trees proposed to be retained may be affected by the construction of new buildings and works of Classes 1 and 10, a Tree Protection Plan as per Appendix 12 is to be submitted.</p> <p>Development applications which require the removal of bushland on land under the Warringah LEP 2011 must address</p>

Internal Referral Body	Comments
	<p>relevant objectives and requirements of Parts E2, E3, E4, E5, E6, E7 and E8 of the Warringah DCP 2011.</p> <p><u>B5 Side Boundary Setbacks</u></p> <p>Objectives</p> <ul style="list-style-type: none"> • To provide opportunities for deep soil landscape areas. • To ensure that development does not become visually dominant. • To ensure that the scale and bulk of buildings is minimised. • To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained. • To provide reasonable sharing of views to and from public and private properties. <p>Requirements</p> <p>Development on land shown coloured on the DCP Map Side Boundary Setbacks is to maintain a minimum setback from side boundaries as shown on the map.</p> <p>Side boundary setback areas are to be landscaped and free of any above or below ground structures, car parking or site facilities other than driveways and fences.</p> <p>On land within the R3 Medium Density Residential zone, above and below ground structures and private open space, basement car parking, vehicle access ramps, balconies, terraces, and the like shall not encroach the side setback except as provided for under Exceptions below.</p> <p>Note</p> <p>On corner allotments, to measure the side setback and side boundary envelope, the side boundaries are taken to be the boundaries that do not have frontage to a public street.</p> <p><u>B7 Front Boundary Setbacks</u></p> <p>Objectives</p> <ul style="list-style-type: none"> • To create a sense of openness. • To maintain the visual continuity and pattern of buildings and landscape elements. • To protect and enhance the visual quality of streetscapes and public spaces. • To achieve reasonable view sharing. <p>Requirements</p> <p>Development is to maintain a minimum setback to road frontages. The front boundary setback area is to be landscaped and generally free of any structures, basements, carparking or site facilities other than driveways, letter boxes, garbage storage areas and fences. Where primary and secondary setbacks are specified, buildings and structures (such as carparks) are not to occupy more than 50% of the area between the primary and secondary setbacks. The area between the primary setback and the road boundary is only to be used for landscaping and driveways.</p> <p>For land zoned E3 and not having frontage to Kamber Road or Kimbriki Road the minimum front building setback area is to be densely landscaped using locally occurring species of canopy trees</p>

Internal Referral Body	Comments
	and shrubs and free of any structures, carparking or site facilities other than driveways, letterboxes and fences.
NECC (Bushland and Biodiversity)	<p>Supported subject to conditions</p> <p>Biodiversity Referral 24 October 2022 The proposal has been assessed against the following applicable biodiversity-related provisions:</p> <ul style="list-style-type: none"> • NSW Biodiversity Conservation Act 2016 • Warringah DCP Section E Natural Environment controls <p>The proposal is considered to be inconsistent with applicable controls due to unacceptable impacts to native trees and vegetation.</p> <p>Vegetation on the site includes some very significant and old remnant native trees and areas of good quality groundcover/understory, with confirmed and potential threatened species habitat across the site. The proposal seeks to remove more than 82% of the prescribed native trees on site, which indicates that it has not been designed and sited to avoid and minimise environmental impacts.</p> <p>The applicant is encouraged to redesign the proposal to substantially reduce the extent of impacts to native vegetation, trees and wildlife habitat.</p> <p>Biodiversity Referral 17 March 2023 The amended plans and updated BDAR are noted.</p> <p>The amended plans indicate a minor reduction in the overall building footprint, largely due to deletion of some paddocks, the eastern portion of the ring road and some car spaces. However, as indicated in the updated BDAR, the overall impact area of the proposal remains similar to that of the original proposal - specifically, 2.1 ha compared to 2.14 ha under the original design. In addition, the updated BDAR states that a total of 195 trees (66% of all site trees) will still require removal to accommodate the building footprint and associated Asset Protection Zone (APZ) requirements, stating that the "relatively high number of trees (to be removed) is due to APZ requirements associated with the new dwelling on a property that has not been previously developed for residential use".</p> <p>Despite the reduced building footprint, the proposal will still impact the majority of native vegetation on the site, largely due to the Inner Protection Zone APZ as recommended in the bush fire assessment report; specifically: "That all grounds within the subject property are to be maintained as an Asset Protection Zone (Inner Protection Area) as detailed in the NSW Rural Fire Service's document 'Standards for</p>

Internal Referral Body	Comments
	<p>Asset Protection Zones' and Appendix 4 of Planning for Bush Fire Protection 2019".</p> <p>It is considered that establishment of an IPA across the entirety of the 2.16 ha site will effectively result in the loss of the majority of native trees, understory and groundcover vegetation on the site. As per WDCP Clause E2 (Prescribed Vegetation), development on the site is required to be "situated and designed to minimise the impact on prescribed vegetation, including remnant canopy trees, understorey vegetation, and ground cover species". WDCP Clauses E5 (Native Vegetation) and E6 (Retaining unique environmental features) also require development to be designed to avoid and minimise impacts to native vegetation and wildlife habitat. As such, the proposal is considered to be inconsistent with local planning controls.</p> <p>Biodiversity Comments 13 July 2023</p> <p>These comments are based on the following information:</p> <ul style="list-style-type: none"> • Letter outlining amendments (Cadence & Co, 23 May 2023) • Amended Plans (Cadence and Co, 12 May 2023): <ul style="list-style-type: none"> - Site Plan - Landscape Plans - Plant Schedule - Existing Tree Plan - Lower Ground Floor Plan - Roof Plan - Sections - Elevations - Excavation, Fill, Erosion and Sediment Control Plan • Vegetation Management Plan (Kingfisher Urban Ecology and Wetlands, May 2023) • Updated Biodiversity Development Assessment Report (Kingfisher Urban Ecology and Wetlands, May 2023) • Updated Bushfire Assessment Report (Building Code & Bushfire Hazard Solutions, 18 May 2023) <p>The updated bush fire assessment report recommends an APZ "for a minimum of 36 metres in each direction or the subject property boundary whichever comes first (as shown in Figure 05)". Figure 05 of this report shows the Site Plan dated 15 May 2023, which indicates a 36m buffer from the dwelling notated as 'bush fire requirements'. The Site Plan also indicates an area to the west and north of the 'bush fire requirements area' which is notated as "existing remnant native vegetation to be retained and improved".</p> <p>However, both the updated biodiversity report and the Vegetation Management Plan (VMP) identify this 'remnant native vegetation' area as proposed to be managed as an Inner Protection Area (IPA):</p>

Internal Referral Body	Comments
	<p>"The VMP area is located along the western and northern boundary outside of the proposed development footprint. The VMP area is to be maintained as an Inner Protection Area (IPA) as per the Bushfire Assessment Report 2023 and Planning for Bush Fire Protection 2019." As per the bush fire report, the western and northern setbacks are not required to be managed as an IPA in order to comply with applicable bush fire requirements. In addition, the Site Plan indicates the removal of at least 21 trees for which there appears to be no justification based on the development footprint, bush fire requirements or arboricultural risk assessment. While the arborist report identifies 20 of these trees as 'consider for removal', this appears to be based on an assessment of condition rather than as a necessity to facilitate the development or bush fire requirements. Furthermore, Tree 286 (<i>Corymbia gummifera</i>) which was assessed by the arborist as 'consider for retention', is proposed to be removed despite not being within the development footprint.</p> <p>To address the above concerns, the VMP is to be amended to provide for retention and restoration of native vegetation within the 'VMP area' shown in Figure 3.2 of the VMP. As the management prescriptions of the VMP are based upon the 'remnant native vegetation' area shown in the Site Plan dated 15 May 2023, the Site Plan must also be amended to indicate that all existing trees will be retained within this area.</p> <p><u>Required Information:</u></p> <ul style="list-style-type: none"> An amended VMP which provides for retention and restoration of native vegetation within the VMP area (as shown in Figure 3.2 of the VMP) and includes five-year management prescriptions for retention and restoration of the VMP area. The VMP is to set out management actions to restore the VMP area to the natural structure and condition of the Sydney North Exposed Sandstone Woodland vegetation community. The following documents are to be amended to indicate retention of the 21 trees within the VMP area which are currently proposed for removal: <ul style="list-style-type: none"> - Site Plan - Existing Tree Plan - Landscape Plans The plant schedule is to be amended in accordance with the above. <p>Biodiversity Referral 7 August 2023</p> <p>The referral is based on the following amended information, in addition to plans and documents provided May 2023:</p> <ul style="list-style-type: none"> Amended Plans (Cadence and Co, 17 July 2023): <ul style="list-style-type: none"> - Site Plan - Lower Ground Floor Plan

Internal Referral Body	Comments
	<p>- Excavation, Fill, Erosion and Sediment Control Plan</p> <ul style="list-style-type: none"> • Amended Landscape Plan (Myles Baldwin Design, 26 July 2023) • Vegetation Management Plan (Kingfisher Urban Ecology and Wetlands, May 2023 updated July 2023) • Updated Biodiversity Development Assessment Report (Kingfisher Urban Ecology and Wetlands, May 2023 updated July 2023) • Email from Bushfire Consultant confirming tree removal requirements within APZ (Building Code & Bushfire Hazard Solutions, 20 July 2023) <p>The updated bush fire assessment report recommends an APZ “for a minimum of 36 metres in each direction or the subject property boundary whichever comes first (as shown in Figure 05)”. Figure 05 of the bush fire report shows the Site Plan dated 15 May 2023, which indicates a 36m buffer from the dwelling notated as ‘bush fire requirements’. The amended Site Plan dated 17 July 2023 also includes this 36m ‘bush fire requirements area’, and also identifies the western and northern setbacks of the site as “VMP Requirements - Retain and Restore Native Vegetation - Refer to VMP”. The Vegetation Management Plan (VMP) dated July 2023 sets out five-year management prescriptions for the retention and restoration of Northern Sydney Scribbly Gum Woodland (PCT 3586) / Sydney North Exposed Sandstone Woodland (PCT 1783).</p> <p>The VMP outlines the following actions:</p> <ul style="list-style-type: none"> • restoration of retained areas • nest box installation • exclusion and tree protection fencing • weed control <p>As a result of amendments requested July 2023, the proposal now retains almost 60% of the remaining trees on site, with the VMP also proposing compensatory planting at a minimum average density of one (1) new tree per 20m², over a VMP area of approximately 8500m². All existing trees within the VMP area will now be retained, with the exception of Trees 81, 92, 99 and 114 which have been identified as a priority for removal, generally for safety reasons.</p> <p>The quality and condition of habitat within the ‘VMP area’ will also be improved over the term of the VMP through weed control and nest box installation. To ensure the ongoing protection and retention of vegetation within the VMP area, a Section 88E covenant is to be applied to the retained areas within the northern and western setbacks. This will support the protection and conservation of the</p>

Internal Referral Body	Comments
	<p>threatened orchid species (<i>Microtis angusii</i>) identified on site, which is listed as endangered under the NSW Biodiversity Conservation Act 2016 and the Commonwealth Environment Protection and Biodiversity Conservation Act 1999.</p> <p>It is noted that the plant schedule in the Landscape Plans (Myles Baldwin Design, 26 July 2023) identifies the VMP area as either 'Zone 1' or 'Zone 6' for the purposes of landscaping. Both of these zones are proposed for new landscaping with a mix of native and exotic species. However, as formal landscaping in the VMP area is inconsistent with the VMP's objective of retaining and restoring the natural vegetation community, the plant schedule is to be amended so that all land identified as 'VMP Area' is planted and managed as Sydney North Exposed Sandstone Woodland PCT. This will be conditioned.</p> <p>In addition to the proposed revegetation measures outlined in the VMP, the Biodiversity Development Assessment Report (BDAR) dated July 2023 has assessed the impacts and prescribed a biodiversity offset credit obligation comprising 10 ecosystem credits and 20 species credits. These will be conditioned.</p> <p>Based on the above, the Biodiversity section can support the amended proposal, subject to the conditions recommended in this referral.</p>
NECC (Development Engineering)	<p>Supported subject to conditions</p> <p>The submitted stormwater plan proposes discharge to the kerb in Coonawarra Road. Based on Council maps the subject site has limited fall to Coonawarra Rd and as such the discharge location and volume of discharge to the road is unacceptable.</p> <p>It is recommended that the proposed discharge be to a level spreader located at the rear with an appropriately sized OSD system. Due to the proposed volume of discharge the level spreader should be located a minimum of 20m from the rear boundary to allow for flows to dissipate naturally and the spreader be of sufficient size to prevent concentrated flow and scouring. The proposed outflows from the site are to mimic existing conditions.</p> <p>Additional Information Provided on 4/10/2022 The design statement provided by NB consulting engineers have been considered. However the proposed volume and method of discharge to Coonawarra Road is not supported. Bases on Council Maps the majority of the fall for the site is to the northwest and any proposed design must mimic current conditions. Additional information required for assessments are:</p> <ul style="list-style-type: none"> • A catchment plan showing current site flows to the northwest and northeast.

Internal Referral Body	Comments
	<ul style="list-style-type: none"> Any proposed discharge to Coonawarra Rd cannot exceed the existing flows. Only a discharge similar to the current volume and rate will be considered acceptable. Discharge method to Coonawarra Rd cannot be concentrated. The discharge to the northwest is to be via a level spreader located with sufficient setback from the rear boundary to allow stormwater to dissipate naturally. <p>Additional Information Provided on 13/2/2023 The amended stormwater plans with the provision of OSD and discharge to the northwest and northeast are satisfactory subject to conditions. No objections to approval subject to conditions as recommended.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p>Supported subject to standard requirements</p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>
Aboriginal Heritage Office	<p>Supported subject to conditions</p> <p>Reference is made to the proposed development at the above area and Aboriginal heritage.</p> <p>The Aboriginal Heritage Office agrees with the recommendations made by Unearthed Archaeology & Heritage.</p> <p><i>*Planner Note - The recommendations contained within the Aboriginal Heritage Due Diligence assessment will form a condition of consent.</i></p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1311962S dated 17 June 2022).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	47
Thermal Comfort	Pass	Pass
Energy	50	50

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid who raised no objections.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b)

and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Warringah Local Environmental Plan 2011

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	8.5m	8.97m	5.52%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of Non-compliance

Development standard:	Height of Buildings
Requirement:	8.5m
Proposed:	8.97m
Percentage variation to requirement:	5.52%

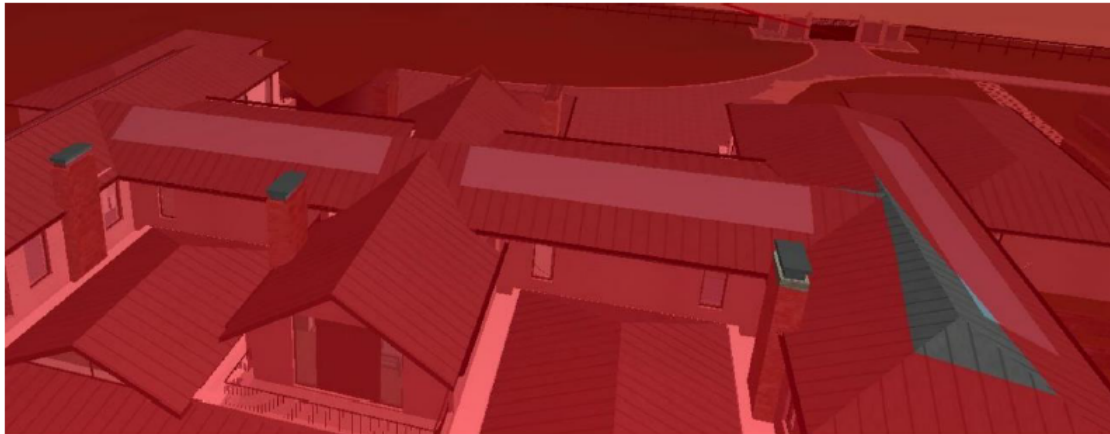


Figure 1: Extract from perspective view prepared by Cadence & Co Design Pty Ltd indicating breach of the maximum height control for the roof areas of the dwelling

Assessment of Request to vary a Development Standard

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard, has taken into consideration the judgements contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 4.6 Exceptions to Development Standards

(1) The objectives of this clause are as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Comment:

Clause 4.3 – Height of Buildings development standard is not expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (b) that there are sufficient environmental planning grounds to justify contravening the development

standard.

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Secretary has been obtained.

Clause 4.6 (4)(a)(i) (Justification) Assessment

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

Comment:

The Applicant's written request has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,

- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- (c) to promote the orderly and economic use and development of land,
- (d) to promote the delivery and maintenance of affordable housing,
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- (g) to promote good design and amenity of the built environment,
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- (j) to provide increased opportunity for community participation in environmental planning and assessment.

Applicants Written Request

The applicants written request argues, in part:

There are sufficient environmental planning grounds to justify contravening the development standard. The aspect of the development which contravenes the development standard is the northern extremity of the roof form of the first floor due to the topography of the land with the slope to the north and north-west. Where the first floor exceeds the height control, views past that element will be maintained.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- *The proposal promotes the orderly and economic use and development of land through the efficient use of the existing infrastructure to meet the housing needs of the community (1.3(c)).*
- *The proposed development will maintain the general bulk and scale of the existing surrounding newer dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).*
- *Similarly, the proposed works will provide for excellent residential amenity within a built form which is compatible with the streetscape of Coonawarra Road which also promotes the orderly and economic use of the land (cl 1.3(c)).*
- *The proposed development is considered to promote good design and enhance the residential amenity of the buildings' occupants and the immediate area, which is consistent with the Objective 1.3 (g).*
- *The proposed new dwelling and in particular the inclusion of a modest profile roof form demonstrates good design and improves the amenity of the built environment by creating improved and functional living area and also suitably maintains the views enjoyed by neighbouring properties and will retain their primary views to the north-east, east and south (1.3(g)).*
- *Consistent with the findings of Commissioner Walsh in Eather v Randwick City Council [2021] NSW LEC 1075 and Commissioner Grey in Petrovic v Randwick City Council [2021] NSW LEC 1242, the particularly small departure from the actual numerical standard and absence of impacts consequential of the departure constitute environmental planning grounds, as it promotes the good design and amenity of the development in accordance with the objects of the EP&A Act.*

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of a building that provides sufficient floor area for future occupants whilst reducing the height and envelope visible from the street to minimise the impacts of bulk and scale and maintain and create views over and past the building from the public domain. These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the maximum building height control.

Assessment Officers Comments:

The above comments are generally concurred with, and particularly that the slope of the site does contribute to the exceedance, the extent of variation is considered minor (with the majority of the building complying) and that there will be an absence of any adverse impacts (including visual impacts), given the large spatial separation between the dwelling and the boundaries. The pavilion style roof form breaks up the building bulk and demonstrates good design.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

Clause 4.6 (4)(a)(ii) (Public Interest) Assessment

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of Development Standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the WLEP 2011 are:

(1) The objectives of this clause are as follows:

a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,

Comment:

The building is generally beneath the 8.5m height limit and will be beneath the tree canopy level by the trees surrounding the site. The minor departure from the height control is not considered to render the development inconsistent with the locality.

b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,

Comment:

There will be no adverse impact in terms of privacy, views and overshadowing due to the large spatial separation to the site boundaries.

c) to minimise adverse impact of development on the scenic quality of Warringah's coastal and bush environments,

Comment:

The significant spatial separation to the boundaries and surrounding tree canopy assists in mitigating adverse impacts on the bushland setting, with the minor exceedance not considered to result in an adverse visual impact on the bushland setting.

d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities,

Comment:

The proposed dwelling provides more than compliant setbacks to the public road and will be surrounded by existing and replacement landscaping that will assist in screening the building. The minor breach from the pitched roof form will not result in adverse visual impacts.

Zone Objectives

The underlying objectives of the RU4 Primary Production Small Lots zone are:

- *To enable sustainable primary industry and other compatible land uses.*

Comment: A residential dwelling is a permitted use in the zone and is a compatible land use, as evident by the surrounding dwellings.

- *To encourage and promote diversity and employment opportunities in relation to primary industry enterprises, particularly those that require smaller lots or that are more intensive in nature.*

Comment: Not relevant to this dwelling house application. However, given the limited overall site coverage, there is ample opportunity to provide small scale rural or primary industry uses to generate employment.

- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*

Comment: A residential use is not considered to conflict with the surrounding land uses and is compatible with the surrounding dwellings.

- *To minimise the impact of development on long distance views of the area and on views to and from adjacent national parks and bushland.*

Comment: A suitable landscape buffer is maintained around the perimeter of the site to maintain the bushland vista of the area. The development is set centrally within the site and into the hillside and will not be visually prominent from a long distance.

- *To maintain and enhance the natural landscape including landform and vegetation.*

Comment: A suitable landscape buffer consisting of existing trees and new replacement planting will be established around the site perimeter, maintaining and enhancing the existing vegetation. Earthworks are limited to the building footprint and located central to the site.

- *To ensure low intensity of land use other than land uses that are primary industry enterprises.*

Comment: The dwelling house use, together with a tennis court, swimming pool and shed is a low intensity of use given the size of the land. These structures are consistent with surrounding properties.

- *To maintain the rural and scenic character of the land.*

Comment: The dwelling is placed central to the site with a landscape buffer around, maintaining a rural character with plenty of open space and landscaping, well in excess of the landscape requirements.

Conclusion

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the RU4 Primary Production Small Lots zone.

Clause 4.6 (4)(b) (Concurrence of the Secretary) Assessment

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS20-002 dated 5 May 2020 issued by the NSW Department of Planning & Infrastructure, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the Northern Beaches Local Planning Panel.

6.2 Earthworks

The objectives of Clause 6.2 - 'Earthworks' require development:

- (a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, and*
- (b) to allow earthworks of a minor nature without requiring separate development consent.*

In this regard, before granting development consent for earthworks, Council must consider the following matters:

- (a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality*

Comment: The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

- (b) the effect of the proposed development on the likely future use or redevelopment of the land*

Comment: The proposal will not unreasonably limit the likely future use or redevelopment of the land.

(c) the quality of the fill or the soil to be excavated, or both

Comment: The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

(d) the effect of the proposed development on the existing and likely amenity of adjoining properties

Comment: The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the recommendation of this report to limit impacts during excavation/construction.

(e) the source of any fill material and the destination of any excavated material

Comment: The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

(f) the likelihood of disturbing relics

Comment: The development was referred to the Aboriginal Heritage Office who provided comments and conditions that have been included in the consent.

(g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area

Comment: The site is not located in the vicinity of any watercourse or drinking water catchment. An assessment has been undertaken by Council's biodiversity team with regard to tree removal and environmentally sensitive areas.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is **supported**, in this particular circumstance.

6.4 Development on sloping land

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

(a) the application for development has been assessed for the risk associated with landslides in relation to both property and life, and

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective and therefore, Council is satisfied that the development has been assessed for the risk associated with landslides in relation to both property and life.

(b) the development will not cause significant detrimental impacts because of stormwater discharge from the development site, and

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective. The application has also been assessed by Council's Development Engineers in relation to stormwater. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will not cause significant detrimental impacts because of stormwater discharge from the development site.

(c) the development will not impact on or affect the existing subsurface flow conditions.

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective. The application has also been assessed by Council's Development Engineers in relation to stormwater. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will not result in adverse impacts or effects on the existing subsurface flow conditions.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	East - 6.7m West - 8.1m	N/A 12.5%	Yes No
B5 Side Boundary Setbacks	10m (West)	28m Tennis Court 54m Dwelling	N/A	Yes
B7 Front Boundary Setbacks	20m (Primary - South) 10m (Secondary - East)	20m Tennis Court 28m Dwelling 15m Shed 30m Dwelling	N/A	Yes
B9 Rear Boundary Setbacks	10m (North)	54m	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	30% (6,526m ²)	76% (16,661m ²)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D13 Front Fences and Front Walls	Yes	Yes
D14 Site Facilities	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes
D17 Tennis Courts	Yes	Yes
D18 Accessibility and Adaptability	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E5 Native Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

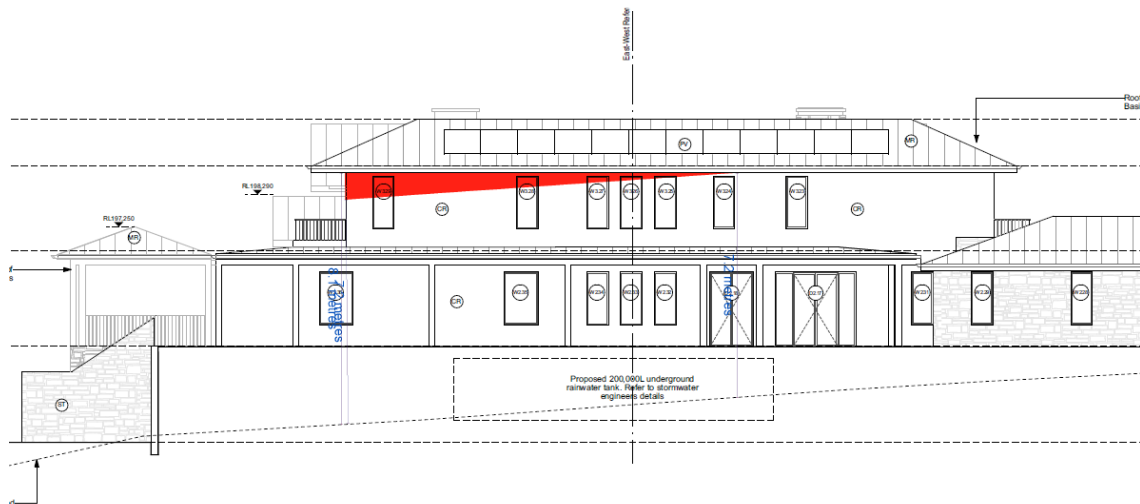
Detailed Assessment

B1 Wall Heights

Description of Non-compliance

The WDCP requires a maximum wall height of 7.2m measured to the point directly beneath that wall.

The proposed dwelling has a non-compliance to the western elevation wall which is up to 8.1m, which is shown in red in the below figure:



Merit Consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

Comment: The portion of wall which exceeds 7.2m is along the western elevation and is setback of approximately 60m from the western boundary. The spatial separation, combined with the existing trees and proposed trees to be planted, will not result in a visual impact to the adjoining property.

- *To ensure development is generally beneath the existing tree canopy level*

Comment:
The proposal will be below the predominant tree canopy level.

- *To provide a reasonable sharing of views to and from public and private properties.*

Comment:
There are no view impacts from the proposal.

- *To minimise the impact of development on adjoining or nearby properties.*

Comment:

No direct amenity impacts with regards to views, privacy or overshadowing will arise.

- *To ensure that development responds to site topography and to discourage excavation of the natural landform.*

Comment:

The portion of wall which encroaches is exacerbated by the slope of the land. Excavation is limited to the building footprint and the building generally sits beneath the 8.5m height limit, with the exception of a minor portion which is discussed earlier in this report.

- *To provide sufficient scope for innovative roof pitch and variation in roof design.*

Comment:

There is pitched traditional roof form provided and it is mostly contained within the 8.5m height limit, with the exception of a minor point encroachment which is discussed earlier in this report.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is **supported**, in this particular circumstance.

D13 Front Fences and Front Walls

The proposal incorporates a 1.8m high by 4m wide entrance gate feature at the southern frontage. This is consistent with the style of entry feature gates in Duffy's Forest and takes up only a minor portion of the total site frontage. The remainder of the boundary fencing consists of post and rail fencing which is also consistent with the character of the locality.

D17 Tennis Courts

The proposal includes a tennis court with flood lighting. The WDCP clause contains a note stating that "*Tennis courts are not to incorporate artificial illumination.*" It is noted that this control is applicable throughout all land zones within the Warringah LEP, including standard residential zones and rural zones.

In support of the proposed tennis court lighting, the application is accompanied by a Lighting Plan detailing how light spill can be mitigated. This lighting plan has been reviewed by Council's Environmental Health Officer and conditions have been recommended to require compliance with the plan.

The site is located in a rural zone, which allows increased spatial separation to the adjoining residences (when compared to standard R2 zone where the control is equally applicable) and therefore Council can apply flexibility given the large lot setting. It is noted the tennis court has a 28m setback to the eastern boundary and will be separated by retained and supplementary landscape planting between the tennis court and the site boundary.

A condition has been imposed requiring that the tennis court lighting shall not operate between the hours of 9.00pm and 7.00am. Subject to the conditions provided by Council's EHO to require

compliance with the lighting plan, the tennis court lighting can supported in this particular circumstance.

E1 Preservation of Trees or Bushland Vegetation

The controls contained within E1 has been considered by Council's Biodiversity and Landscape team, please refer to comments above. The matters in relation to tree removal have also been addressed within the public submissions component of this report.

E2 Prescribed Vegetation

The controls contained within E2 has been considered by Council's Biodiversity and Landscape team, please refer to comments above. The matters in relation to tree removal have also been addressed within the public submissions component of this report.

E5 Native Vegetation

The controls contained within E5 has been considered by Council's Biodiversity and Landscape team, please refer to comments above. The matters in relation to tree removal have also been addressed within the public submissions component of this report.

E6 Retaining unique environmental features

The controls contained within E6 has been considered by Council's Biodiversity and Landscape team, please refer to comments above. Those portions of the site with the most dense and sensitive vegetation have been retained, being along the northern and western boundaries.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$74,350 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$7,435,000.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;

- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
- b) There are sufficient environmental planning grounds to justify the contravention.

2) The proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

PLANNING CONCLUSION

This application has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to receiving more than 10 submissions, in fact receiving 14 submissions across two notification periods.

The concerns raised in the objections have been addressed and largely resolved by the deletion of the horse paddocks and arena, decrease to the required bushfire APZ and subsequent retention of a larger proportion of native trees and vegetation across the site. The northern and western portions of the site are to be managed and restored in accordance with the Vegetation Management Plan to ensure required biodiversity outcomes are met and to offset the loss of tree removal required for the new dwelling, associated structures and bushfire protection.

The critical assessment issues included; tree removal and biodiversity, building height and scale and the issues raised in the public submissions. All of these issues have been addressed in detail within this assessment report, including comments from Council's Landscape and Biodiversity teams.

The Clause 4.6 variation in relation to the Building Height is well founded and is supported.

Overall, the proposal in its amended form, performs well against the relevant controls and will not result in unreasonable environmental planning impacts on adjoining or nearby properties, or the natural environment.

The proposal has therefore been recommended for APPROVAL.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

That Northern Beaches Council as the consent authority permits a contravention of clause 4.3 Height of Building development standard pursuant to clause 4.6 of the WLEP 2011 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2022/1250 for Demolition of outbuildings and construction of a dwelling-house, including a swimming pool/spa, pool pavilion/pool house, tennis court, shed and entry gates, with associated tree removal and landscaping on land at Lot 305 DP 752017, 305 / 0 Coonawarra Road, TERREY HILLS, subject to the conditions printed below:

Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

The development must be carried out in compliance with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA02 Rev 4	26/07/2023	Cadence and Co
DA03 Rev 3	12/05/2023	Cadence and Co
DA04 Rev 1	12/07/2022	Cadence and Co
DA05 Rev 1	12/07/2022	Cadence and Co
DA06 Rev 3	12/05/2023	Cadence and Co
DA07 Rev 3	12/05/2023	Cadence and Co
DA08 Rev 3	12/05/2023	Cadence and Co
DA09 Rev 3	12/05/2023	Cadence and Co
DA11 Rev 1	12/07/2022	Cadence and Co
DA12 Rev 3	12/05/2023	Cadence and Co
DA14 Rev 1	14/07/2023	Cadence and Co
EXF 01 - External Finishes	Undated	Cadence and Co

Engineering Plans		
Drawing No.	Dated	Prepared By

D01 to D06 Issue B	09/02/2023	NB Consulting Engineers
D07 to D16 Issue A	30/06/2022	NB Consulting Engineers

Reports / Documentation – All recommendations and requirements contained within:

Report No. / Page No. / Section No.	Dated	Prepared By
Vegetation Management Plan - Revised July 2023	July 2023	Kingfisher Urban Ecology
Biodiversity Development Assessment Report - Revised July 2023	July 2023	Kingfisher Urban Ecology
On-Site Wastewater Report REF 2376-WW-A-04	11/05/2023	Broadcrest Consulting
Bushfire Assessment Report Ref 220125C	18/05/2023	Bushfire Hazard Solutions
Lighting Design Prediction Rev 1	24/01/2023	IWE Lighting
Aboriginal Due Diligence Assessment Version B.2022.1068	21/12/2022	Unearthed Archaeology and Heritage
Geotechnical Report Ref 34818Brpt	22/04/2022	JK Geotechnics
Arboricultural Impact Assessment Report	22/06/2022	Martin Peacock Tree Care
BASIX Certificate No.1311962S	17/06/2022	Efficient Living

d) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

c) The development is to be undertaken generally in accordance with the following:

Landscape Plans		
Drawing No.	Dated	Prepared By
DWG 615_DA_01 Issue D	26/07/2023	Myles Baldwin Design
DWG 615_DA_02 Issue D	26/07/2023	Myles Baldwin Design
DWG 615_DA_03 Issue D	26/07/2023	Myles Baldwin Design
DWG 615_DA_04 Issue D	26/07/2023	Myles Baldwin Design
DWG 615_DA_05 Issue D	26/07/2023	Myles Baldwin Design
DWG 615_DA_10 Issue D	26/07/2023	Myles Baldwin Design
DWG 615_DA_11 Issue D	26/07/2023	Myles Baldwin Design

DWG 615_DA_12 Issue D	26/07/2023	Myles Baldwin Design
DWG 615_DA_13 Issue D	26/07/2023	Myles Baldwin Design

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	26/05/2022	Cadence and Co

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

2. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifier for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the

work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

3. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
- 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,
 - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

FEES / CHARGES / CONTRIBUTIONS

4. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$74,350.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$7,435,000.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

5. Security Bond

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any

damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifier prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.northernbeaches.nsw.gov.au).

Reason: To ensure adequate protection of Council's infrastructure.

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

6. Compliance with Ecologist's Recommendations – Pre-construction

All pre-construction biodiversity actions specified in Section 11 of the approved BDAR (Kingfisher Urban Ecology and Wetlands, July 2023), Section 3.2 of the approved Vegetation Management Plan (Kingfish Urban Ecology and Wetlands, July 2023), and these conditions of consent are to be implemented at the appropriate stage of the development. Successful implementation of all required pre-construction biodiversity actions is to be certified by the Project Ecologist and evidence provided to the Principal Certifier prior to issue of any Construction Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

7. Preparation of a Native Vegetation Removal Protocol

The Project Ecologist is to prepare a Native Vegetation Removal Protocol which includes the provision of (at a minimum):

- a pre-clearance survey
- direct supervision of tree removal
- protocol for rescue of fauna and relocation of log hollow sections onsite to provide fauna habitat

The Native Vegetation Removal Protocol must also include procedures for stop work and formal impact assessment in the event that threatened fauna species are found during the pre-clearance survey.

The Native Vegetation Removal Protocol is to be submitted to the Principal Certifier prior to issue of Construction Certificate.

Reason: To protect native wildlife.

8. Installation of Nest Boxes

A minimum of ten (10) nest boxes suitable for the following species are to be installed within areas of retained native vegetation on the site:

- Forest owls x 2
- Small native birds x 4

- Microbats x 4

Nest boxes must be attached in accordance with industry best practice (e.g. expandable tree sensitive methods).

Written certification of compliance is to be prepared by the Project Ecologist and submitted to the Principal Certifier prior to issue of the Construction Certificate.

Reason: To maintain wildlife habitat.

9. Vegetation Management Plan Area - Section 88e Instrument

All native vegetation within the area identified as 'VMP Area' in Figure 3.1 of the approved Vegetation Management Plan (Kingfisher Urban Ecology and Wetlands, July 2023), with the exception of Trees 81, 92, 99 and 114, is to be protected, restored and managed through application of a Section 88E Instrument (Conveyancing Act 1919). Northern Beaches Council is to be named on the instrument as the sole authority to release or modify the restriction. Owners are to be bound to manage the area in perpetuity according to the approved Vegetation Management Plan (Kingfisher Urban Ecology and Wetlands, July 2023).

The draft instrument is to be submitted as acceptable to Council and evidence provided to the Principal Certifier prior to the issue of the Construction Certificate. The approved instrument is to be registered on the land title prior to the issue of the Occupation Certificate and lodgment with NSW Land Registry Services.

Reason: To protect native vegetation proposed for retention.

10. Amendment of Landscape Plans

The submitted Landscape Plans (Myles Baldwin Design, 26 July 2023) are to be amended in accordance with the following:

- All land which falls within the area identified as 'VMP Area' in Figure 3.1 of the approved Vegetation Management Plan (Kingfisher Urban Ecology and Wetlands, July 2023) is to be identified as 'native vegetation retention area, as per the approved VMP'.
- No new landscaping is to be undertaken within the VMP Area, other than native vegetation restoration works proposed in the VMP. The planting schedule is to be amended accordingly.

The Landscape Plan is to be amended by a qualified landscape architect and provided to the Principal Certifier prior to issue of the Construction Certificate.

Reason: To achieve consistency with the approved Vegetation Management Plan.

11. Permanent Delineation of Development Footprint including APZ

Prior to the commencement of any vegetation clearance/modification, the boundary between the development footprint (including the APZ, identified as 'Bush Fire Requirements' in the Site Plan by Cadence & Co, dated 27 July 2023) and the 'VMP Area', is to be surveyed by a registered surveyor and permanently delineated by way of permanent bollards or fencing.

Written certification of compliance is to be prepared by the Project Ecologist and submitted to the Principal Certifier prior to issue of the Construction Certificate.

Reason: To protect native vegetation and wildlife.

12. **Ecosystem credit retirement - like for like**

Before the issue of any construction certificate:

- The class and number of ecosystem credits in the table/s below must be retired to offset the residual biodiversity impacts of the development;
- Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund must be provided to the consent authority. This may be in the form of: i) a copy of the email from DPE confirming that the correct type and number of credits has been retired in accordance with the applicable offset rules; or ii) if the offset obligation has been satisfied by way of payment into the Biodiversity Conservation Fund, a copy of the Section 6.33 statement.

Table 1. Like for like ecosystems credits to be retired - non-threatened ecological community

Impacted PCT	Number of ecosystem credits	Containing Hollow Bearing Trees	IBRA sub-region	PCTs that can be used to offset the impacts from development
PCT 3586- Northern Sydney Scribbly Gum Woodland	10	YES	[Pittwater, Cumberland, Sydney Cataract, Wyong and Yengo, or Any IBRA subregion that is within 100 kilometers of the outer edge of the impacted site.	Sydney Coastal Dry Sclerophyll Forests. This includes PCT's: 1681, 3578, 3579, 3580, 3581, 3582, 3583, 3584, 3585, 3586, 3587, 3588, 3589, 3590, 3591, 3592, 3593, 3594, 3595, 3596, 3597, 3598

Reason: To ensure that biodiversity impacts are appropriately offset through the retirement of ecosystem credits (or payment to the Biodiversity Conservation Fund) before biodiversity impacts occur.

13. **Species credit retirement - like for like**

Before the issue of any construction certificate:

- the class and number of species credits identified in the table below must be retired to offset the residual biodiversity impacts of the development; and
- evidence of the retirement of credits or payment to the Biodiversity Conservation Fund must be provided to the consent authority. This may be in the form of: i) a copy of the email from DPE confirming that the correct type and number of credits has been retired in accordance with the applicable offset rules; or ii) if the offset obligation has been satisfied by way of payment into the Biodiversity Conservation Fund, a copy of the Section 6.33 statement.

Table of species credits required to be retired – like for like

Impacted species credit species	Number of species credits	IBRA sub-region
Cercartetus nanus / Eastern Pygmy-possum	6	Any in NSW
Chalinolobus dwyeri / Large-eared Pied Bat	9	Any in NSW
Microtis angusii / Angus's Onion Orchid	1	Any in NSW
Myotis macropus / Southern Myotis	1	Any in NSW
Petauroides volans / Southern Greater Glider	1	Any in NSW
Petaurus norfolcensis / Squirrel Glider	1	Any in NSW
Pseudophryne australis / Red-crowned Toadlet	1	Any in NSW

Reason: To ensure that biodiversity impacts are appropriately offset through the retirement of species credits (or payment to the Biodiversity Conservation Fund) before biodiversity impacts occur

14. Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of a Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

15. On-site Stormwater Detention Details

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by NB Consulting Engineers, job number 2203083, drawing number D01 to D16, dated 9/2/2023. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

Detailed drainage plans, including engineering certification, are to be submitted to the

Principal Certifier for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater and stormwater management arising from the development.

16. Structural Adequacy and Excavation Work

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Construction Certificate.

Reason: To provide public and private safety.

17. Vehicle Crossings Application

The Applicant is to submit an application for driveway levels with Council in accordance with Section 138 of the Roads Act 1993. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Principal Certifier prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

18. Engagement of Project Ecologist

A Project Ecologist is to be employed for the duration of the approved works to ensure all biodiversity protection measures are carried out in accordance with the approved Biodiversity Development Assessment Report (Kingfisher Urban Ecology and Wetlands, May 2023 revised July 2023) and Vegetation Management Plan (Kingfisher Urban Ecology and Wetlands, May 2023 revised July 2023).

The Project Ecologist must have one of the following memberships / accreditation:

- Practising member of the NSW Ecological Consultants Association (<https://www.ecansw.org.au/find-a-consultant/>) OR
- Biodiversity Assessment Method Accredited Assessor under the relevant legislation (<https://customer.lmbc.nsw.gov.au/assessment/AccreditedAssessor>)

Evidence of engagement of the Project Ecologist is to be provided to the Principal Certifier prior to issue of Construction Certificate.

Reason: To protect native vegetation and wildlife.

19. Compliance with Standards

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**20. Project Arborist**

A Project Arborist, with minimum AQF Level 5 in arboriculture, shall be engaged to provide tree protection measures in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites. The Project Arborist is to specify and oversee all tree protection measures such as tree protection fencing, trunk and branch protection and ground protection.

The Project Arborist is to supervise all demolition, excavation and construction works near all trees to be retained including construction methods near the existing trees to protect tree roots, trunks, branches and canopy. Where required, manual excavation is to occur ensuring no tree root at or >25mm (Ø) is damaged by works unless approved by the Project Arborist.

Existing ground levels shall be maintained within the tree protection zone of trees to be retained unless authorised by the Project Arborist.

All tree protection measures specified must:

- a) be in place before work commences on the site, and
- b) be maintained in good condition during the construction period, and
- c) remain in place for the duration of the construction works.

The Project Arborist shall provide certification to the Certifying Authority that all recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded including at commencement, during the works and at completion.

- Note:
- i) A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed.
 - ii) Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: Tree protection.

21. Tree Removal Within the Property

This consent approves the removal of the trees within the property as indicated on Site Plan Dwg No. DA02 Rev 4 dated 26/7/2023 prepared by Cadence and Co. Any trees identified within the arborist report that are not shown on Site Plan Dwg No. DA02 Rev 4 dated 26/7/2023 are not approved for removal under this consent.

- Note:
- Exempt Species as listed in the Development Control Plan or the Arboricultural Impact Assessment do not require Council consent for removal.

Reason: To enable authorised building works.

22. Tree Removal Within the Road Reserve

This consent approves the removal of the following tree within the road reserve as indicated on Site Plan Dwg No. DA02 Rev 4 dated 26/7/2023 prepared by Cadence and Co:

- Tree 12

Removal of the approved tree/s in the road reserve shall only be undertaken by a Council approved tree contractor. Details of currently approved tree contractors can be obtained from Northern Beaches Council's Trees Services Section prior to removal.

Reason: Public liability.

DURING BUILDING WORK

23. Protection of Landscape Features and Sites of Significance

All natural landscape features including natural rock outcrops, natural vegetation, soil and watercourses are to remain undisturbed during demolition, excavation and construction works except where affected by works detailed on approved plans.

Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office contacted to assess the finds.

Under Section 89a of the NPW Act should the objects be found to be Aboriginal, NSW Biodiversity and Conservation Division, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

Reason: Preservation of significant environmental features.

24. Tree and Vegetation Protection

- a) Existing trees and vegetation shall be retained and protected including:
 - i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
 - ii) all trees and vegetation located on adjoining properties,
 - iii) all road reserve trees and vegetation.
- b) Tree protection shall be undertaken as follows:
 - i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites including the provision of temporary fencing to protect existing trees within 5 metres of development,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained unless authorised by the Project Arborist,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with the Project Arborist,
 - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by the Project Arborist,
 - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone without consultation with the Project Arborist

- including advice on root protection measures,
- vii) should either or all of v), vi) and vii) occur during site establishment and construction works, the Project Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
 - viii) any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
 - ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
 - x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
 - xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Certifying Authority must ensure that:

- c) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites do not occur within the tree protection zone of any tree and any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained on the site during the construction is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

Note: All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking or removal of any tree(s) is prohibited.

Reason: Tree and vegetation protection.

25. Condition of Trees

During the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to or by seeking arboricultural advice from the Project Arborist during the works.

In this regard all protected trees shall not exhibit:

- i) a general decline in health and vigour,
- ii) damaged, crushed or dying roots due to poor pruning techniques,
- iii) more than 10% loss or dieback of roots, branches and foliage,
- iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,
- v) yellowing of foliage or a thinning of the canopy untypical of its species,

- vi) an increase in the amount of deadwood not associated with normal growth,
- vii) an increase in kino or gum exudation,
- viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
- ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of trees.

26. Compliance with Ecologist's Recommendations – During Construction and Demolition

All 'during works' biodiversity actions specified in Section 11 of the approved BDAR (Kingfisher Urban Ecology and Wetlands, July 2023), Section 3.2 of the approved Vegetation Management Plan (Kingfisher Urban Ecology and Wetlands, July 2023), and these conditions of consent are to be implemented at the appropriate stage of the development. Successful implementation of biodiversity actions required to be undertaken during demolition/construction is to be certified by the Project Ecologist and evidence provided to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

27. Dead or Injured Wildlife

If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a suitably qualified ecologist and/or licensed wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

28. Native Vegetation Removal Protocol to be Implemented

Removal of native vegetation approved for removal is to be undertaken in accordance with the Native Vegetation Removal Protocol, as prepared by the Project Ecologist prior to the Construction Certificate.

The Project Ecologist is to provide written certification of compliance to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To protect native wildlife.

29. Protection of Habitat Features

All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed during the construction works, except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

30. Fauna and Tree Hollow Relocation

The Project Ecologist is to be present to:

- a) relocate any displaced fauna that may be disturbed during any tree clearance and/or construction works; and
- b) direct the project arborist to salvage any tree hollows within the development area and place them within areas of retained native vegetation on the site.

Reason: To protect native wildlife.

31. **Road Reserve**

The applicant shall ensure the public footways and roadways adjacent to the site are maintained in a safe condition at all times during the course of the work.

Reason: Public safety.

32. **Geotechnical Requirements**

All recommendations (if any) included in the Geotechnical Report referenced in Condition 1 of this consent are required to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

33. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier.

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

34. **Vehicle Crossings**

The Applicant is to construct two vehicle crossing 3.6 metres wide along the southern boundary and 3.5 metres wide along the eastern boundary in accordance with Northern Beaches Council Drawing Normal and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

A copy of the vehicle crossing inspection form is to be submitted to the Principal Certifier.

Reason: To facilitate suitable vehicular access to private property.

35. **Waste Management During Development**

The reuse, recycling or disposal of waste during works must be done generally in accordance

with the Waste Management Plan for this development.

Details demonstrating compliance must be submitted to the Principal Certifier.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

36. **Wastewater system compliance**

All recommendations and required works as contained within the report by Broadcast Consulting Pty Ltd dated May 2023 REF: 2376-WW-A-04 being implemented.

Details demonstrating compliance are to be submitted to the Principal Certifier.

Reason: To ensure the wastewater disposal system is compliant and will not create a risk to public health.

37. **Wastewater system installation approved by a suitably qualified person**

Prior to the release of the Occupation Certificate evidence must be supplied to the Principal Certifier from a suitably qualified person that the on-site wastewater management system has been installed according to requirements listed in the certificate of accreditation for the wastewater system and wastewater report.

Reason: To ensure the wastewater system has been installed correctly to minimise the potential for harm.

38. **Pool backwash**

Pool backwash must be managed separately from the wastewater system and wastewater land application areas.

Reason: To ensure the wastewater system has been installed correctly to minimise the potential for harm.

39. **Landscape Completion**

Trees shrubs and groundcovers are to be implemented in accordance with the approved Landscape Plan, as amended by conditions of consent.

Prior to the issue of any Occupation Certificate details (from a qualified horticulturalist, landscape architect or landscape designer) shall be submitted to the Principal Certifying Authority certifying that the landscape works have been completed in accordance with all relevant conditions of consent.

Reason: Environmental amenity.

40. **Condition of Retained Vegetation - Project Arborist**

Prior to the issue of any Occupation Certificate a report prepared by the project arborist shall be submitted to the Certifying Authority assessing the health and impact on all existing trees required to be retained including the following information:

- a) compliance to any Arborist recommendations for tree protection generally and during excavation works,

- b) extent of damage sustained by vegetation as a result of the construction works,
- c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree protection.

41. Compliance with Ecologist's Recommendations – Post Construction

All post-construction biodiversity actions specified in Section 11 of the approved BDAR (Kingfisher Urban Ecology and Wetlands, July 2023), Section 3.2 of the approved Vegetation Management Plan (Kingfisher Urban Ecology and Wetlands, July 2023), and these conditions of consent are to be implemented at the appropriate stage of the development. Successful initiation/completion of all required post-construction biodiversity actions is to be certified by the Project Ecologist and evidence provided to the Principal Certifier prior to issue of any Construction Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

42. Protection of Habitat Features – Certified by Ecologist

All natural landscape features, including any rock outcrops, native vegetation, soil and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

Written details demonstrating compliance are to be certified by the Project Ecologist and provided to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To protect wildlife habitat.

43. Monitoring and Maintenance of Installed Nest Boxes

All nest boxes are to be monitored and maintained in accordance with the approved Vegetation Management Plan (Kingfisher Urban Ecology and Wetlands, July 2023).

Written certification of compliance is to be prepared by the Project Ecologist and submitted to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To maintain wildlife habitat.

44. Certification of Ongoing Work

A suitably qualified ecological/bush regeneration contractor is to be engaged for ongoing implementation of all post-occupation biodiversity actions specified in these conditions of consent, Section 11 of the approved BDAR and Section 3.2 of the approved Vegetation Management Plan (Kingfisher Urban Ecology and Wetlands, July 2023).

Evidence of engagement is to be certified by the Project Ecologist and provided to Principal Certifier and Council's Biodiversity & Planning Team prior to issue of an Occupation Certificate.

Reason: To protect and maintain native vegetation and wildlife habitat.

45. Clearing for Asset Protection Zones – Project Ecologist to Certify

Clearing of vegetation for APZ establishment must only occur within the surveyed and permanently marked APZ boundaries. No clearing is to be undertaken outside of the APZ boundaries.

Written certification of compliance is to be prepared by the Project Ecologist and submitted to the Principal Certifier prior to issue of the Occupation Certificate.

Reason: To protect native vegetation and wildlife.

46. **No Weeds Imported On To The Site**

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan 2019 – 2023) are to be imported on to the site prior to or during construction works.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To reduce the risk of site works contributing to spread of Priority and environmental weeds.

47. **Geotechnical Certification Prior to Occupation Certificate**

A Geotechnical Engineer or Engineering Geologist is to provide written confirmation that they have inspected the site during construction or reviewed information relating to the construction and that they are satisfied that development referred to in the development consent has been constructed in accordance with the intent of the Geotechnical Report referenced in Condition 1 of this consent.

Written certification is to be provided to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

48. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**

The Applicant shall lodge a Legal Documents Authorisation Application with Council. The application is to include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan by a Registered Surveyor) and Hydraulic Engineers' certification for the completed on-site stormwater detention system works. A guide to the process can be found on Council's website using the following link.

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/legal-documents-authorisation-on-site-stormwater-detention-systems/guide-submitting-ldaa-nov19.pdf>

The form for the application can be found on Council's website using the following link.

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/legal-documents-authorisation-on-site-stormwater-detention-systems/4023-legal-documents-authorisation-oct19.pdf>

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for the on-site stormwater detention system is to be submitted.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of final Occupation Certificate.

Reason: To ensure the on-site stormwater detention system is maintained to an appropriate operational standard and not altered.

49. **Waste Water System**

Prior to the issuing of an Occupation Certificate, a copy of a s68 (Local Government Act 1993) approval to operate the Waste Water System, and the waste water system must be activated and effectively operating to the satisfaction of the Principal Certifier.

Details demonstrating compliance are to be submitted to the Principal Certifier.

Reason: To ensure the premises a maintained in an appropriate manner in perpetuity.

50. **Lighting Design Recommendations**

Prior to the issuing of any Construction Certificate, documentation is to be submitted to the satisfaction of the Principal Certifier that design recommendations within the Lighting Design Predition dated 1/24/2023 by IWE Lighting and Obtrusive Light Compliance Report have been implemented and incorporated into the design of the tennis court.

Reason: To prevent light spill nuisance by using mitigation measures in design

51. **Control of light spill**

The Principal Certifying Authority must be satisfied that all outdoor lighting is designed and positioned to minimise any detrimental impact upon the amenity of other premises and adjacent dwellings and that the outdoor lighting complies with the relevant provisions of Australian Standard 1558.3:2005 Pedestrian area (Category P) lighting – Performance and design requirements and Australian Standard 4282:1997 Control of the obtrusive effects of outdoor lighting.

Reason: To protect public health and amenity.

52. **Swimming Pool Requirements**

The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009;
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety

- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifier, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

(g) Swimming pools and spas must be registered with the *Division of Local Government*.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To protect human life.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

53. **Exclusion of Livestock from VMP Area**

Livestock are to be permanently excluded from land identified as 'VMP Area' in Figure 3.1 of the approved Vegetation Management Plan (Kingfisher Urban Ecology and Wetlands, July 2023).

Reason: To protect native vegetation including threatened species, in accordance with the approved Vegetation Management Plan.

54. **Geotechnical Recommendations**

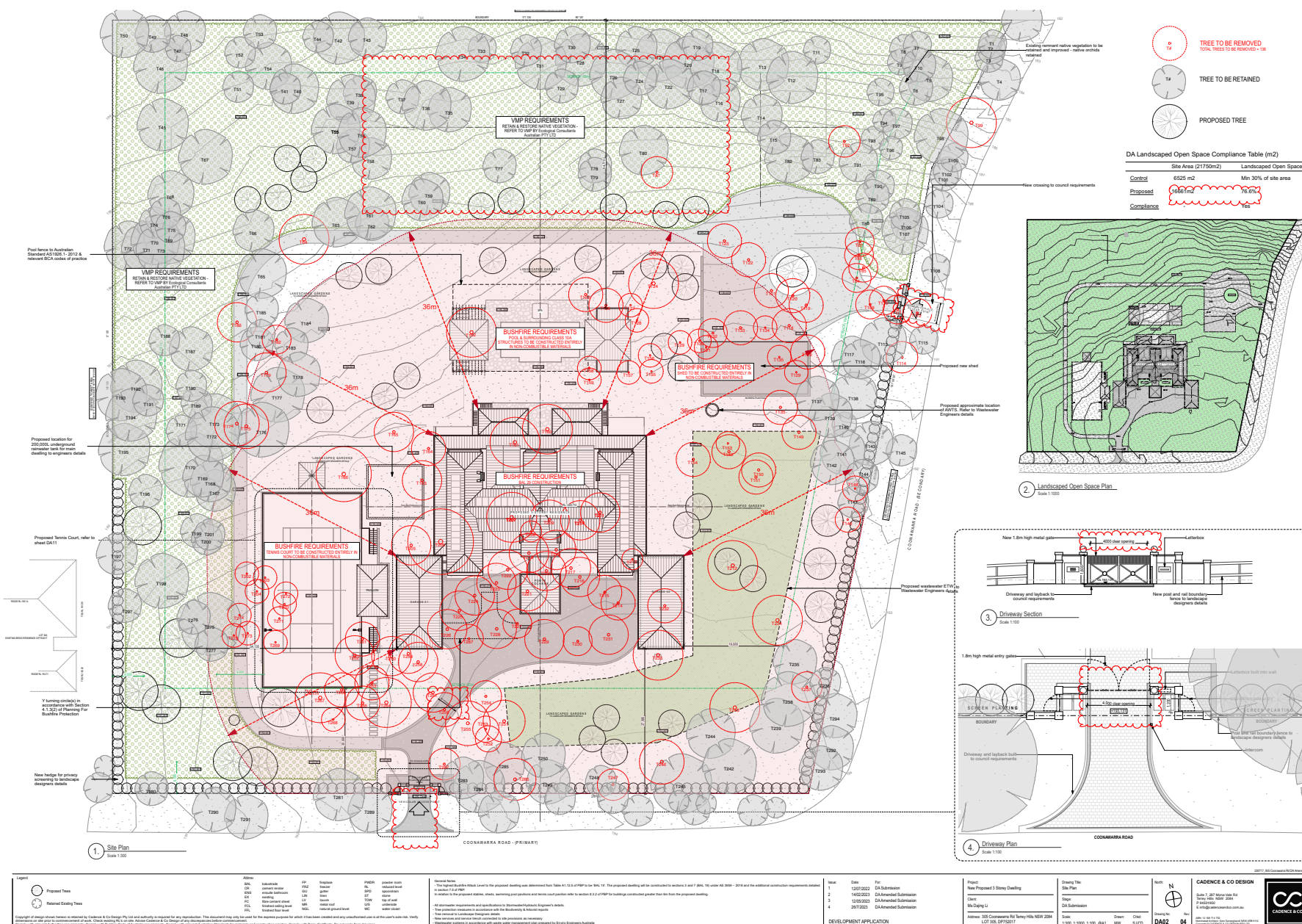
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

55. **Hours of Operation for Tennis Court Lighting**

The tennis court lighting shall not operate between the hours of 9pm and 7am.

Reason: Information to ensure that amenity of the surrounding locality is maintained.





General Notes

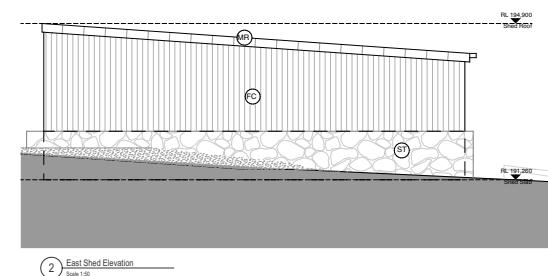
- All plumbing, flashing and waterproofing relating to flat roofing systems to comply with the BCA and relevant Australian standards including as/stra 3500: 2003 "plumbing and drainage".
- All downpipe and overflow spigots to be sized and located to comply with as/stra 3500: 2003 "plumbing and drainage".
- Provide proprietary lead guard as selected to all gutters.
- Fluepipes and chimneys to be constructed to NCC v2 3.10.7.
- All stormwater requirements and specifications to Stormwater/hydraulic Engineering.
- All pipes to be 100mm diam sewer grade UPVC
- All pipes to be laid at 1% minimum grade unless stated otherwise.
- All work to be in accordance with local Council standards and specification.
- All levels shown to AH.
- All balustrade to BCA requirements
- All windows and doors numbered to be made in conjunction with thermal assessment and as scheduled





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4 West Shed Elevation

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**APPENDIX
CLAUSE 4.6 – HEIGHT OF BUILDINGS**

(As revised February 2023)

Vaughan Milligan Development Consulting Pty Ltd

WRITTEN REQUEST PURSUANT TO CLAUSE 4.6 OF WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011

305 COONAWARRA ROAD, TERRY HILLS

**FOR THE CONSTRUCTION OF A NEW DWELLING, GARAGES, SWIMMING POOL, TENNIS COURT,
ARENA AND STABLES**

For: Proposed construction of a new dwelling, garages, swimming pool, tennis court, arena and stables
At: 305 Coonawarra Road, Terry Hills
Owner: Ms Dajing Li
Applicant: Ms Dajing Li
C/- Cadence & Co Design Pty Ltd

1.0 Introduction

This written request is made pursuant to the provisions of Clause 4.6 of Warringah Local Environmental Plan 2011. In this regard, it is requested Council support a variation with respect to compliance with the maximum building height as described in Clause 4.3 of the Warringah Local Environmental Plan 2011 (WLEP 2011).

This submission has been prepared in response to revised architectural plans prepared by Cadence & Co dated 10 February 2023.

2.0 Background

Clause 4.3 restricts the height of a building and refers to the maximum building height noted within the "*Height of Buildings Map*."

The maximum building height for this locality is 8.5m and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The proposed development will present a maximum height of 8.97m to the northern extremity of the roof of the northern aspect of the first floor, which occurs as a direct result of the fall within the site levels towards the north and north-west and exceeds Council's maximum building height by 0.470m or 5.52%, which therefore does not comply with this control.

The extent of the building which exceeds the 8.5m maximum height control is noted within Figure 1 over.

The controls of Clause 4.3 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

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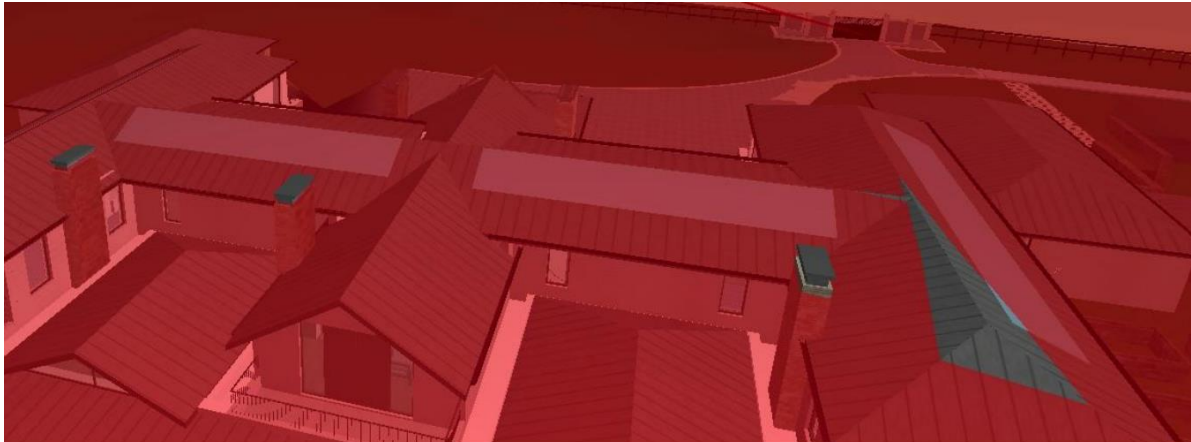


Figure 1: Extract from perspective view prepared by Cadence & Co Design Pty Ltd indicating breach of the maximum height control for the roof areas of the dwelling

Is clause 4.3 of WLEP 2011 a development standard?

- (a) The definition of “development standard” in clause 1.4 of the EP&A Act means standards fixed in relation to an aspect of a development and includes:

“(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work.”
- (b) Clause 4.3 relates to the maximum building height of a building. Accordingly, clause 4.3 is a development standard.

3.0 Warringah Local Environmental Plan 2011 (“WLEP”)

3.1 Clause 2.2 and the Land Use Table

Clause 2.2 and the Land Zoning Map provide that the subject site is zoned RU4 Primary Production Small Lots (the RU4 zone) and the Land Use Table in Part 2 of WLEP 2011 specifies the following objectives for the RU4 zone:

- *To enable sustainable primary industry and other compatible land uses.*
- *To encourage and promote diversity and employment opportunities in relation to primary industry enterprises, particularly those that require smaller lots or that are more intensive in nature.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*

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- *To minimise the impact of development on long distance views of the area and on views to and from adjacent national parks and bushland.*
- *To maintain and enhance the natural landscape including landform and vegetation.*
- *To ensure low intensity of land use other than land uses that are primary industry enterprises*
- *To maintain the rural and scenic character of the land.*

The proposed development is for the purpose of a new dwelling and associated facilities which is a permissible use in the RU4 Primary Production Small Lots zone.

3.2 Clause 4.3 – Height of buildings

Clause 4.3 of WLEP sets out the maximum height of a building as follows:

- (1) *The objectives of this clause are as follows—*
 - (a) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
 - (b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
 - (c) *to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
 - (d) *to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*
- (2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*
- (2A) *If the Height of Buildings Map specifies, in relation to any land shown on that map, a Reduced Level for any building on that land, any such building is not to exceed the specified Reduced Level.*

The Height of Buildings Map specifies a maximum building height of 8.5m.

3.2 The Dictionary to WLEP operates via clause 1.4 of WLEP. The Dictionary defines “building height” as:

building height (or height of building) means—

- (a) *in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) *in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

3.3 Clause 4.6 – Exceptions to Development Standards

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Clause 4.6(1) of WLEP provides:

(1) *The objectives of this clause are as follows:*

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“Initial Action”) provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant’s written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”. If objective (b) was the source of the Commissioner’s test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.”

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of WLEP provides:

- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Clause 4.3 (the Height of Buildings development standard) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of WLEP.

Clause 4.6(3) of WLEP provides:

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- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

The proposed development does not comply with the height of buildings development standard pursuant to clause 4.3 of WLEP which specifies a maximum building height of 8.5m, however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and it is considered that there are sufficient environmental planning grounds to justify contravening the development standard.

The relevant arguments are set out later in this written request.

Clause 4.6(4) of WLEP provides:

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the Secretary has been obtained.*

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]). The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that

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that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 55 of the *Environmental Planning and Assessment Regulation 2021*, the Secretary has given written notice dated 5 May 2020, attached to the Planning Circular PS 20-002 issued on 5 May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of WLEP provides:

(5) *In deciding whether to grant concurrence, the Secretary must consider:*

- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) *the public benefit of maintaining the development standard, and*
- (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

The Council has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b). Council should consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development.

Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation.

Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.3 of WLEP from the operation of clause 4.6.

The Nature and Extent of the Variation

- 4.0** This request seeks a variation to the height of buildings development standard contained in clause 4.3 of WLEP.
- 4.1** Clause 4.3(2) of WLEP specifies a maximum building height of 8.5m which is noted on the Height of Buildings Map for the subject site.
- 4.2** The proposal has a maximum height of 8.97m to the northern extremity of the roof over the first floor level of the dwelling. The non-compliance is 0.470m which equates to a variation of 5.52%.

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5.0 Relevant Caselaw

5.1 In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 continue to apply as follows:

17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate*

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that compliance is unreasonable or unnecessary in more than one way.

5.2 The relevant steps identified in Initial Action (and the case law referred to in Initial Action) can be summarised as follows:

1. Is clause 4.3 of WLEP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 and the objectives for development for in the RU4 Primary Production Small Lots zone?
4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.3 of WLEP?

6.0 Request for Variation

6.1 Is compliance with clause 4.3 unreasonable or unnecessary?

- (a) This request relies upon the 1st way identified by Preston CJ in *Wehbe*.
- (b) The first way in *Wehbe* is to establish that the objectives of the standard are achieved.
- (c) In response to the first way in *Wehbe*, the objective of the maximum building height standard and the reasoning why compliance is unreasonable or unnecessary is set out below:

- ***To enable sustainable primary industry and other compatible land uses***

The RU4 Primary Production Small Lots Zone contemplates a sustainable primary industry along with other compatible land uses. The proposed residential land use and ancillary structures, including horse stables and arena are sympathetic to the surrounding rural character. The land use does not conflict or result in adverse impacts to the sustainability of surrounding primary industry land uses.

The dwelling is a compatible land use and envisaged within the zone and provides for

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the needs of the community. The needs of the community are appropriately provided for in this instance through the proposed development which will provide for an appropriate level of family accommodation and in a form which respect the predominant height and scale of the surrounding dwellings, while also not conflicting or impacting on nearby primary industry uses.

- ***To encourage and promote diversity and employment opportunities in relation to primary industry enterprises, particularly those that require smaller lots or that are more intensive in nature***

N/A – the proposal does not seek consent for a primary industry enterprise.

- ***To minimise conflict between land uses within this zone and land uses within adjoining zones.***

The proposal provides for the construction of a new dwelling, in a manner which will continue to complement the single dwelling character of the site and the immediate area.

Further, the modulation and articulation of the built form where visible from the public domain minimises the visual impact of the development. The proposed new dwelling will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing.

The view of the dwelling from Coonawarra Road will be that of a compatible two storey height, which is consistent with the prevailing height of other buildings in the near vicinity that have been altered and been added to or constructed in order to provide increased floor area and off-street parking facilities.

The proposal will be consistent with and complement the existing detached style single dwelling housing within the locality and the wider Warringah area.

The site will maintain a compliant soft landscaped area, which will maintain the balance between landscaping and built form. No significant vegetation requires removal.

The proposal has been well designed to complement the streetscape. The desired future character is not defined in the planning controls, but the proposal is consistent with the existing streetscape and with recent works in the area.

Consistent with the decision of Roseth SC in *Project Ventures Developments v Pittwater Council* [2005] NSWLEC 191, it is my opinion that “most observers would not find the proposed building offensive, jarring or unsympathetic”.

Further, the modulation of the front façade and building elevations where visible from the public domain minimises the visual impact of the development.

The proposal presents a compatible height and scale to the surrounding development and the articulation to the building facades and the modest roof form will suitably

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distributethe bulk of the floor area.

- ***To minimise the impact of development on long distance views of the area and on views to and from adjacent national parks and bushland.***

The proposed dwelling has been considered with respect to the landform and topography of the site and wider area by providing a largely compliant dwelling, including substantial setbacks from the dwelling and boundaries. Notwithstanding the minor height encroachment, the dwelling largely complies with the prescribed height standard and all ancillary structures also comply with the prescribed height standard.

The dwelling provides a modest roof form that is not uncharacteristic with the area and considers existing views to and from adjacent bushland.

- ***To maintain and enhance the natural landscape including landform and vegetation.***

The siting and design of the development has maintained the natural landscape, including landform and vegetation, where practicable. The topography of the site, including fall to the north-west necessitates some degree of excavation, but this is not unreasonable.

Due to the nature of the existing site, which includes vegetation dispersed across the site, some disturbance to vegetation is necessary. However, the proposal includes extensive proposed planting, including replacement planting of similar, native species.

- ***To ensure low intensity of land use other than land uses that are primary industry enterprises.***

The proposed residential land use is purposefully designed to ensure a low intensity design. The development considers the surrounding land uses by providing a development that is consistent with the desired character of the zone.

- ***To maintain the rural and scenic character of the land.***

The dwelling and ancillary structures maintain a sympathetic appearance with respect to the rural and scenic character of the land by providing a compatible design that corresponds to the existing and desired character of the land.

6.2 Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015]*

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NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.

24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31].*

There are sufficient environmental planning grounds to justify contravening the development standard.

The aspect of the development which contravenes the development standard is the northern extremity of the roof form of the first floor due to the topography of the land with the slope to the north and north-west. Where the first floor exceeds the height control, views past that element will be maintained.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposal promotes the orderly and economic use and development of land through the efficient use of the existing infrastructure to meet the housing needs of the community (1.3(c)).
- The proposed development will maintain the general bulk and scale of the existing surrounding newer dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).
- Similarly, the proposed works will provide for excellent residential amenity within a built form which is compatible with the streetscape of Coonawarra Road which also promotes the orderly and economic use of the land (cl 1.3(c)).
- The proposed development is considered to promote good design and enhance the residential amenity of the buildings’ occupants and the immediate area, which is consistent with the Objective 1.3 (g).

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- The proposed new dwelling and in particular the inclusion of a modest profile roof form demonstrates good design and improves the amenity of the built environment by creating improved and functional living area and also suitably maintains the views enjoyed by neighbouring properties and will retain their primary views to the north-east, east and south (1.3(g)).
- Consistent with the findings of Commissioner Walsh in *Eather v Randwick City Council* [2021] NSW LEC 1075 and Commissioner Grey in *Petrovic v Randwick City Council* [2021] NSW LEC 1242, the particularly small departure from the actual numerical standard and absence of impacts consequential of the departure constitute environmental planning grounds, as it promotes the good design and amenity of the development in accordance with the objects of the EP&A Act.

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of a building that provides sufficient floor area for future occupants whilst reducing the height and envelope visible from the street to minimise the impacts of bulk and scale and maintain and create views over and past the building from the public domain. These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the maximum building height control.

It is noted that in *Initial Action*, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

6.3 Is the proposed development in the public interest because it is consistent with the objectives of clause 4.3 and the objectives of the RU4 Primary Production Small Lots zone?

- (a) Section 4.2 of this written requests demonstrates that the proposed development meets each of the applicable objectives of clause 4.3. As the proposed development meets the applicable objectives it follows that the proposed development is also consistent with those objectives.
- (b) Each of the objectives of the RU4 Primary Production Small Lots Zone and the

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reasons why the proposed development is consistent with each objective is set out below.

(a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,

The Objective of Clause 4.3 (1)(a) seeks to ensure buildings are compatible with the height and scale of surrounding and nearby development.

The surrounding area is predominantly characterised by one, two and three storey development.

The proposal seeks to accommodate the dwelling within a compatible building form, with the slope of the site towards the north-west corner resulting in a portion of the roof being up to 8.97m in height.

The overall building height respects the surrounding character and the design seeks to minimise the visual height by providing for significant setbacks to the first-floor level.

The proposed external colour and materials palette utilises recessive finishes and is intended to ensure that the building's visual height and scale is further minimised.

(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,

Due to the general slope of the site towards the north-west, adjoining properties enjoy outlooks of surrounding bushland.

The resulting works will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing.

The proposal will provide for appropriate setbacks for all levels which will allow for suitable views and access to sunlight to be maintained through and over the site.

Views from the surrounding public spaces are not adversely affected.

(c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,

The proposal is located within an established rural zone and any long distance view of the proposed development will not read the works as out of scale or incompatible with its neighbours.

The proposal will not have any direct impact on the nearby coastal or bush environment.

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(d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities

The site is not within a recreation or environmental protection zone and is well removed sufficiently from nearby areas of national park. The site is not within a conservation area or in the vicinity of any heritage items.

The proposal is intended to reflect the predominant scale and form of the surrounding development in Coonawarra Road and will reflect the existing rural character and single dwelling uses in the vicinity.

The proposal will maintain an appropriate area of soft landscaping which will maintain a suitable balance between the landscaping and the built form.

6.6 Has Council obtained the concurrence of the Director-General?

Under cl 55 of the *Environmental Planning and Assessment Regulation 2021*, the Secretary has given written notice dated 5 May 2020, attached to the Planning Circular PS 20-002 issued on 5 May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

6.7 Has the Council considered the matters in clause 4.6(5) of WLEP?

- (a) The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed development and for the particular site and this design is not readily transferrable to any other site in the immediate locality, wider region of the State and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment.
- (b) As the proposed development is in the public interest because it complies with the objectives of the development standard and the objectives of the zone there is no significant public benefit in maintaining the development standard.
- (c) there are no other matters required to be taken into account by the secretary before granting concurrence.

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7.0 Conclusion

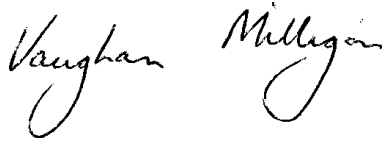
This development proposed a departure from the maximum building height development standard, with the proposed new dwelling to provide a maximum building height of 8.97m to the proposed northern extremity of the First Floor Level roof.

This variation occurs as a result of the sloping topography of the site as it falls towards the north-western corner.

This written request to vary to the maximum building height standard specified in Clause 4.3 of the Warringah LEP 2013 adequately demonstrates that the objectives of the standard will be met.

The bulk and scale of the proposed development is appropriate for the site and locality.

Strict compliance with the maximum building height control would be unreasonable and unnecessary in the circumstances of this case.



VAUGHAN MILLIGAN
Town Planner

ITEM 4.3**DA2022/2021 - 108 ANZAC AVENUE, COLLAROY -
DEMOLITION OF AN EXISTING DWELLING AND THE
CONSTRUCTION OF A NEW DWELLING WITH SWIMMING
POOL**

AUTHORISING MANAGER	Steve Findlay
TRIM FILE REF	2023/586565
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan & Elevations 3 ↓ Clause 4.6

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the applicant is a relative of a member of council staff who is principally involved in the exercise of council's functions under the Environmental Planning and Assessment Act 1979 and the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of WLEP 2011 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2022/2021 for demolition of an existing dwelling and the construction of a new dwelling with swimming pool on land at Lot 66 DP 212835, 108 Anzac Avenue, COLLAROY subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/2021
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Responsible Officer:	Alex Keller
Land to be developed (Address):	Lot 66 DP 212835, 108 Anzac Avenue COLLAROY NSW 2097
Proposed Development:	Demolition of an existing dwelling and the construction of a new dwelling with swimming pool
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Robyn Hill Sigi Benjamin Hill
Applicant:	Artz 2 Design Pty Limited

Application Lodged:	25/11/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	21/08/2023 to 04/09/2023
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	4.3 Height of buildings: 8.2%
Recommendation:	Approval

Estimated Cost of Works:	\$ 2,777,042.00
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EXECUTIVE SUMMARY

This application is referred to the *Northern Beaches Local Planning Panel (NBLPP)* based on the Ministerial Directions for Local Planning Panels, which state that where an applicant is a relative of a member of staff, that application must be determined by a Local Planning Panel. Referral to the NBLPP maintains an appropriate level of separation and impartial/objective consideration of the DA.

The Clause 4.6 Variation request for the non-compliance with the building height standard arises from the site having a sandstone escarpment across the central area of the site, resulting in a 8.2%

variation (overall height is 9.2m) for a small section of the building approximately 0.7 metres (m) above the 8.5m height line and limited to the eaves, mid front wall and north-western corner of the roof. The site topography substantially corresponds to natural ground level, therefore no comparison between existing (modified) ground level and natural ground level is required.

The variation to the building height does not result in any unreasonable amenity impact and the building would likely not comply with the maximum building height even if compliance with the side boundary envelope was achieved.

Concerns raised in the public submissions predominantly relate to building bulk, privacy impacts, landscaping (tree removal), screening protection from elevated outdoor open space, usability of elevated deck areas in terms of amenity of adjacent neighbours. Critical assessment issues included; the submission issues, building bulk, side boundary envelope and general amenity impacts on adjacent land.

A number of significant native trees are to be removed or will be impacted by the development, which has been comprehensively assessed and is supported, subject to conditions for protection of remaining trees and replanting.

This report concludes with a recommendation that the NBLPP should grant consent to the development application for reasons that the applicant has sufficiently changed the architectural plans during the assessment period to overcome previous inconsistencies with the Warringah DCP related to *Part B3 Side Boundary Envelope*, *Part D9 Building Bulk* and *Part D8 Privacy*.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks consent to demolish the existing dwelling and construct a new dwelling over four stepped levels. The new dwelling consists of:

Garage (RL46.375)

- Double garage with internal workshop/additional area
- Amenities
- Stairs and lift
- Driveway

Lower Ground Floor (RL49.80)

- Living Room with kitchenette
- Two bedrooms
- Terrace
- Office
- Storeroom
- Bathroom amenities
- Stairs and lift

Ground Floor (RL52.90)

- Open plan living/dining room and kitchen
- Home theatre / TV room

- 2 x terraces
- Laundry
- Pantry
- Bathroom amenities
- Stairs and lift
- Fire place

First Floor (RL56.00)

- 4 x bedrooms
- Living room
- bathroom amenities
- Stairs and lift
- Swimming pool and deck at the rear

Ancillary Site Works

Demolition of all site structures, site preparation including selected native tree removal, excavation, drainage works, landscaping, stairs, paths retaining walls and incidental site works.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - D9 Building Bulk
Warringah Development Control Plan - E6 Retaining unique environmental features

SITE DESCRIPTION

Property Description:	Lot 66 DP 212835 , 108 Anzac Avenue COLLAROY NSW 2097
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the south-western side of Anzac Avenue.</p> <p>The site is irregular in shape with a frontage of 13.41m along Anzac Avenue. The site has a surveyed area of 695.9m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates weatherboard dwelling with hardstand parking area.</p> <p>The site slopes downward from the rear boundary to the front boundary by up to 11.9m.</p> <p>The site accommodates a variety of vegetation species including a stand of significant trees within the front setback area including 5 x <i>Angophora costata</i> (Sydney Red Gum). The largest of these is proposed to be removed and other selected minor trees.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by detached dwellings of various age, design and scale although it is noted that the dwellings located on the high side of Anzac Avenue are elevated and therefore, more significant in visual impact to the street.</p>

Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

The land has been used for residential purposes for an extended period of time.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and	<u>Division 8A</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.

Section 4.15 Matters for Consideration'	Comments
Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Clauses 54 and 109</u> of the EP&A Regulation 2021 allows Council to request additional information. Following the completion of the notification period some additional information was requested on 14.2.2023 in relation to considerations regarding building height, dwelling configuration, side boundary envelope, landscaping, overshadowing, driveway design, amenity and the like. Amended plans were subsequently received, dated 21.2.2023, and relate to ancillary / minor elements of landscaping, minor wall sections or sought to clarify information with the design. All submissions have been considered in context of the amendments received and issues raised within the objections regarding the original plans. Further minor amendments to the plans were made to assist with refinements for privacy (see plans 31.5.2023) which again were minor and seeking to respond to the DCP for bulk, privacy amenity and building envelope and submission issues. Further assessment was undertaken and amendments received dated 9.8.2023 (Issue K). These plans were re-notified by letter and email to those who made submissions to the development application pursuant to the Community Participation Plan. Generally the changes seek to improve amenity and reduce non-compliance with <i>no greater impact</i> to adjacent land.</p> <p><u>Clause 92</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact</p>

Section 4.15 Matters for Consideration'	Comments
	The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development in terms of non-compliance / impact on neighbours subject to merit assessment as detailed.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report. Original submission and any subsequent submissions are considered in context of the amended plan versions to the completion of the assessment period. The proposal was formally notified by letter on: <ul style="list-style-type: none"> • 20.12.2022 to 25.1.2023 • 16.8.2023 to 4.9.2023 (any late submissions to reporting are able to be addressed / included by supplementary memo)
Section 4.15 (1) (e) – the public interest	The proposal generally satisfies the planning controls applying to the site under the applicable WLEP 2011 and WDCP 2011, and the variations to the controls have been assessed as being reasonable and acceptable. Furthermore, the issues raised in the public submissions have been considered and do not warrant the refusal of the application.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 21/08/2023 to 04/09/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 3 submission/s from:

Name:	Address:
Evolution Planning Pty Ltd	Po Box 309 FRENCHS FOREST NSW 1640
Mr Bradley Charles Mills	110 Anzac Avenue COLLAROY NSW 2097
Mrs Nicole Kim Hurt	82 Suffolk Avenue COLLAROY NSW 2097

(Note: "Evolution Planning P/L" submission is on behalf of the owners of No.106 Anzac Avenue. Multiple submissions from / on behalf of one property are counted as "one" submitter). Additional

submissions for the notification ending on 4.9.2023 have been included as consideration within this report assessment and matters below.

The following issues were raised in the submissions:

1. Height and views
2. Roof colour
3. Hedge planting
4. Tree removal
5. Building height
6. Insufficient plan details
7. Loss of privacy
8. Overshadowing
9. Noise (terrace areas)
10. Bulk and scale
11. Overlooking
12. Landscape screening
13. Dilapidation risk
14. Use (separate dwelling)

The above issues are addressed as follows:

- **1. Concern that the new dwelling roof will affect views across the site from No.82 Suffolk Avenue**

Comment:

The existing dwelling roof is RL60.05 with the ridge of the new dwelling roof at RL59.43 and the chimney at RL59.63. Therefore, the new dwelling will not be higher than the existing roof line which will allow views from No.82 Suffolk Avenue to be maintained. The rear of the site currently has a substantial hedge along the rear boundary which limits views and overlooking at ground level as can be seen in the photograph below. The new house presents as single storey toward the rear. This issue does not warrant refusal of the application.



Image: Rear yard of site well screened by existing hedge to be retained. Note the bedrock visible near the far corner.

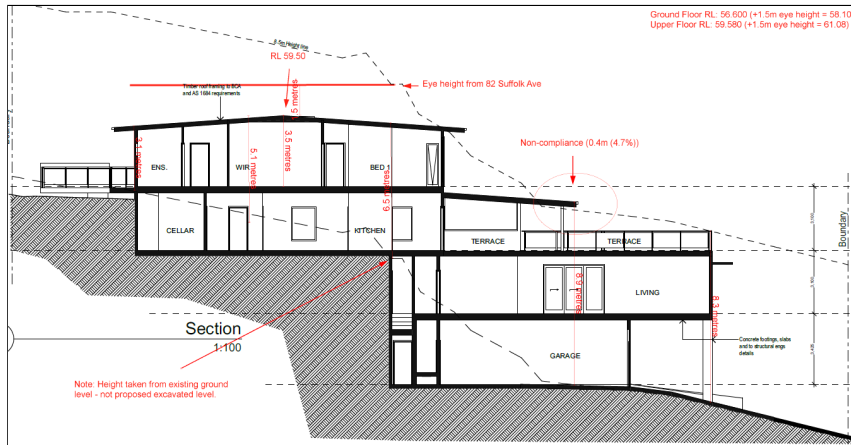


Image: Eye line (red) showing clear view over roof from rear storey in Suffolk Ave.

- 2. **Concern that no detail has been provided for the roof colour for reflectivity impact**

Comment:

The architectural diagrams show "prefinished metal roof sheeting" and "timber fascia boards paint finish as specified". The architectural drawings do not include an external materials and colours schedule and the SEE does not specify colours either. This issue is suitable to be addressed by conditions for a medium to dark colour range.

- 3. **Concern that the landscape plans show "Blueberry Ash" trees up to 10m high and 4 x Bungalow Palms up to 15m high along the property north-western boundary and rear setback area which can impact views over the site from No.82 Suffolk Avenue**

Comment:

This issue is suitable to be addressed by a landscape planting condition for an alternative native species that reaches a maximum natural height of 4.0m. Condition is included that planting provided is installed as per the landscape plans which ensures appropriate screen planting is installed along the boundary setbacks as shown (intended).

- 4. **Concern that the proposal seeks the removal of 3 x Angophora trees on site and the design does not seek to accommodate the retention of these mature canopy trees for flora and fauna habitat**

Comment:

Tree removal has been subject to investigation by a qualified Arborist and some adjustments have been made to the plans to ensure 40% landscape open space. The largest *Angophora* tree is close to the proposed dwelling, OSD and driveway footprint and the position of the tree is not within the 6.5m front setback area. The other 2 trees to be removed are in the side setback and the arborist report notes the constrained position of those trees with regard to boundary structures and impact of future works. Council's Landscape Officer has provided detailed comments on this issue and supports the revised landscape scheme that will only remove the largest *Angophora* and some minor/smaller trees now. (See detailed comments

within the Landscape Officer Internal referral). This issue is suitable to be addressed by conditions.

- **5. Concern that the building does not comply with the 8.5m maximum building height and could comply with a minor change to the building to reduce overhangs and the building scale / width and the clause 4.6 should not be supported given insufficient reasons for the non-compliance**

Comment:

The building non-compliance relates to a minor section of the roof as illustrated on the height blanket diagram. This non-compliance is influenced by the steep terrain and does not cause an unreasonable non-compliance to the height controls or unreasonable amenity impacts. In summary, the clause 4.6 variation is supported for the maximum building height and a detailed consideration of the reasons (including thorough site inspection) has occurred to validate support for the clause 4.6 reasons. The building bulk is discussed in this report under *Part D3 Side Boundary Envelope* and *B9 Building Bulk*. This issue does not warrant refusal of the application.

- **6. The submissions raised concerns that the elevations and sections have inadequate details to compare in relation to No.106 Anzac Parade, and the amendments should include written description as per the Regulations**

Comment:

The submitted plans have survey information that shows the comparative levels of windows, decks, floors, boundaries, trees and the like for adjacent land. In addition No.106 Anzac Avenue has its own CC plans to reference from in relation to habitable rooms, pool location and the like. The subject plans for the proposed DA are drawn to scale and amendments have been made to assist with submission issues. Of note is that the front corner of the pool deck for No.106 Anzac Avenue is approximately 1.3m higher than the main kitchen / BBQ outdoor deck on the proposal.

The applicant has responded to these concerns by reducing the deck areas, including planter box screening, fixed louvre screens and solid wall screens to minimise impacts to an acceptable level. The amendments have been detailed on the drawing, with written annotations and "clouding" and are easy to identify sufficiently to describe the changes for the Regulations. In this regard, the amendments also come about by way of Council assessment requesting the applicant to make changes to the plans specifically to address objection issues raised therefore unrelated changes have not been made that are a wholesale redesign of the proposal.

In summary, the sections, plans and survey details have sufficient details to assess this issue and site inspection assisted consideration of this issue.

- **7. The submissions raised concerns that there will be a loss of privacy due to the adjacent POS area on the elevated front decks**

Comment:

This issue is addressed in detail under the heading *D8 Privacy* within this report. In summary the elevated decks have been substantially reduced in area and with the inclusion of privacy screens and planter box screening now afford appropriate privacy to adjacent land at No.106 and No.110 Anzac Parade. Conditions are included to ensure screening is erected as shown on the plans which is a request raised in submissions. This issue does not warrant refusal of the application, subject to conditions.

- **8. Concern that the proposal will create overshadowing to adjacent properties**

Comment:

The shadow diagrams DA007 demonstrate that the proposal will not cause any unreasonable loss of sunlight to the private open space areas on adjacent land. This is attributed to the single storey nature of the proposal at the rear (bedroom level) and northerly aspect. An acceptable shadow regime will be cast between 9am and 3pm on the 21 June. This issue does not warrant refusal of the application.

- **9. The submissions raised concerns that noise activity from the front terrace area will affect the amenity of adjacent land, particularly No.106 Anzac Avenue**

Comment:

Front decks are a feature of the streetscape, particularly along the "high" side of Anzac Avenue due to the topography enabling distant ocean views from dwellings that are positioned high their respective properties. To assist privacy to No.106 Anzac Parade and No.110 Anzac Parade, the deck areas proposed are now substantially reduced from that originally submitted with the DA. The applicant has been able to address this matter by amended plans (to substantially reduce the deck space/area) provide a section of solid screening (beside the BBQ), as well as angled louvres and planter box screening to ensure no unreasonable impact to adjacent land.

- **10. Concern that the bulk and scale of the development is excessive and not in keeping with the streetscape**

Comment:

This issue is addressed in detail under the heading *Part D3 Side Boundary Envelope and B9 Building Bulk* within this report. In summary, the newer or substantially renovated houses along the high side of Anzac Avenue generally exhibit similar bulk and height as they sit on steeply sloping topography influenced by the escarpment line above Anzac Avenue, therefore dwellings appear to sit high on the land if the floor plate is spread across this natural feature of the topography. The applicant has marginally reduced the overall massing of the building at the point where it was most pronounced toward the NW corner. Overall, the building bulk and non-compliance with the side boundary envelope are considered acceptable by way of the various amendments made to the plans during the DA assessment period.

- **11. Concern that the north-western elevation will overlook adjacent land including direct line of sight into adjacent living room areas**

Comment:

The deck off the living areas have been changed to provide appropriate screening from casual viewing and overlooking toward private open space within No.110 Anzac Avenue. Window hoods are shown for lower level windows of the living area but the forward side window is above fence height (near the fireplace) and may allow overlooking into the adjacent POS, so conditions are included for translucent glazing. The upper level windows for bedrooms on the north-western elevation are highlight windows that will limit overlooking. This issue is addressed by conditions to complement the revised plans (Issue K dated 9.8.2023) to ensure no unreasonable impacts.

- **12. Concern that the screen planting along the boundary will be unable to grow to effective height due to sandstone bedrock.**

Comment:

The landscape plan has been prepared by a qualified Landscape Architect and the site

currently has high hedge planting along the rear boundary which demonstrates that suitable planting can be provided for effective screening. Conditions are recommended to address this issue (to select screening plants that naturally grow to 4m) since this relates to other submissions to balance planting that does not grow too high that could impact distant water views from Suffolk Avenue.

- **13. Concern that the proposal will created dilapidation risks to adjacent land due to the amount of deep excavation and jackhammering required**

Comment:

This issue may be addressed by conditions to ensure dilapidation surveys to be carried out before and after works so that any damage is documented. Additionally the works are required to follow geotechnical recommendations provided in the geotechnical report. This issue is addressed by conditions.

- **14. Concern that the proposal includes potential use for the lower area to be used for a separate (second) dwelling as it has separate entry and the lower living area can be adapted.**

Comment:

Secondary dwellings are permitted within the *R2 Low Density Residential* zone and do not require additional carparking. The applicant has amended the plans to maintain internal connection to the main dwelling and no kitchen is now shown in the lower bedroom / living area. This issue is appropriate to address by a condition to limit the dwelling as a single house as the configuration would change the building to a Class 2 if a 'secondary' dwelling was retro-fitted into the lower storey. Notwithstanding, this "secondary dwellings" are permitted, with consent, in the zone.

- **15. Concern that window dimensions are not shown so may be different size.**

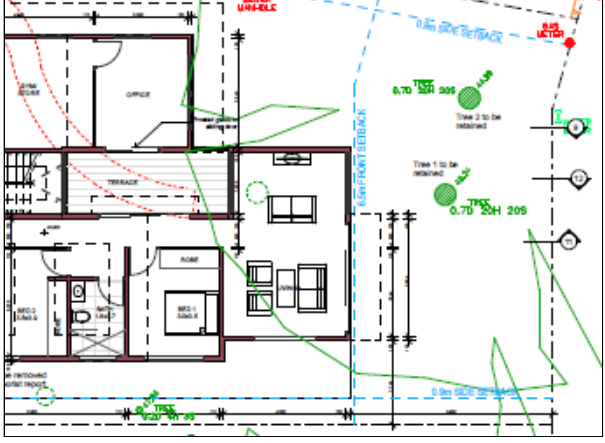


Comment:


The plans are drawn to scale and can be accurately scaled to measure dimensions, setbacks, height and the like. The window positions and size are part of the architectural drawings and cannot be placed in different locations or be of different size without applying for a modification to the DA plans. This issue does not warrant refusal of the application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>Supported with conditions.</p> <p>The application is assessed by Landscape Referral against Warringah Local Environmental Plan 2011 (WLEP) and the following Warringah Development Control Plan 2011 (WDP) controls (but not limited to):</p> <ul style="list-style-type: none"> • D1 Landscaped Open Space and Bushland Setting, • E1 Preservation of Trees or Bushland Vegetation and E2 Prescribed Vegetation.

Internal Referral Body	Comments
	<p>Updated Plans and Reports are submitted, including a Letter from <i>Gelder Group Architects</i> identifying that it <i>"is now proposed to keep both trees 1 and 2 at the front of the property as well as trees 5 and 6 at the side of the property ..."</i> and this is reflected in the updated <i>Architectural Site Plans</i>, but such information is not updated in the <i>Landscape Plans</i> nor the <i>Arboricultural Impact Assessment</i> report, and condition shall be imposed.</p> <p>The following native canopy trees are retained under the updated <i>Architectural Site Plans</i>: tree 1 (Angophora of high retention value); tree 2 (Angophora of medium retention value); tree 5 (Angophora of high retention value); and tree 6 (Eucalyptus of medium retention value). Existing trees tree 3(Angophora of high retention value) and tree 4 (Angophora of medium retention value) are located within the building footprint and should the application be approved as illustrated on the submitted plans removal of two native Angophora trees is unavoidable.</p> <p>Trees 3 and 4 are impacted by the extent of excavation for the garage and associated driveway levels and the proposed workshop area, where the proposed lowering of natural ground levels will remove critical roots and the viability to retain both trees, with proposed changes in natural ground levels in the order of 1 metre and more. Tree 3 (ex. 46.85) is impacted by the reduction for the driveway and garage to RL 45.50 and tree 4 (ex. 49.17) is impacted by the reduction for the workshop to RL 46.375. For existing trees 3 and 4 to be retained natural ground levels would need to be retained across much of the tree protection zone with no changes within the structural root zones of 3.0m for tree 3 and 2.7m for tree 4. It is also noted that the <i>Arboricultural Impact Assessment</i> report identified that tree 4 is currently in decline and thus such trees will require removal in the future irrespective of any development.</p> <p>The Landscape Plan submitted, whilst not updated to reflect the current <i>Architectural Site Plans</i>, includes two replacement native trees within the property. Based on new landscape works shown on the Landscape Plans in combination with the retained existing trees across the property, Landscape Referral raise no concerns subject to imposed conditions.</p> <p><u>Planning Comment</u> Tree number "3" is within the proposed building footprint of the approach to the front door and garage and lower living area / terrace.</p>

Internal Referral Body	Comments
	 <p>Image: Position of tree "3" dotted green is within the lower building structure.</p>  <p>Image: Front of property showing tree '3' in centre of site. Within the front 6.5m setback trees '1' and '2' are to be retained.</p>  <p>Image: Existing trees and driveway position adjacent Tree "3". Tree "1" and "2" on RHS near bins, with tree "5" in far background to be</p>

Internal Referral Body	Comments
	<p>retained.</p>  <p>Image : Extract of tree mapping / numbering from Arborist report.</p>
NECC (Development Engineering)	<p>Supported with conditions.</p> <p><u>Original Referral Comments:</u> The submitted plans include the provision of a new driveway and garage for the proposed dwelling. A review of the driveway grades indicates that the proposed garage level is too high and must be lowered to comply with Council's Extra High driveway profile. Also the drawings include a parking area forward of the garage which must have a maximum grade of 1 in 20 (5%) to comply with the requirements of AS/NZS 2890.1:2004. If this grade cannot be achieved then the cars shown on the drawing are to be removed. A long section from the existing kerb invert on the low side of the crossing is to be provided using Council's Extra High profile. The existing driveway crossing is to be reconstructed as part of the works.</p> <p>The submitted stormwater design including OSD is acceptable. The changes to the proposed driveway will alter the levels of the OSD tank roof and amended plans are to be provided to ensure the design is consistent with the architectural plans.</p> <p>Development Engineering cannot support the proposal due to insufficient information to address vehicular access in accordance with clause C2 of the DCP.</p> <p><u>Amended plans submitted 1/06/23</u> The revised driveway levels and garage level is acceptable. The stormwater plans have not been updated to suit however a condition</p>

Internal Referral Body	Comments																	
	<p>has been provided so suit the revised driveway levels.</p> <p>Development Engineering support the proposal, subject to conditions as recommended.</p>																	
Strategic and Place Planning (Heritage Officer)	Supported without conditions.																	
	HERITAGE COMMENTS																	
	Discussion of reason for referral																	
	This application has been referred as it is in the vicinity of a heritage item, being Item I136 - Remnant street trees, Anzac Avenue and Hendy Avenue, Collaroy , as listed in Schedule 5 of Warringah Local Environmental PPlan 2011.																	
	Details of heritage items affected																	
	Details of this heritage item in the vicinity, as contained within the heritage inventory, are: Item I136 - Remnant street trees, Anzac Avenue and Hendy Avenue, Collaroy <u>Statement of Significance</u> These trees are remnant components of the former open forest community on sheltered hill slopes (Sydney Sandstone Gully Forest) (Benson & Howell, 1994).																	
	This ecological community has been largely cleared in the Collaroy area. This disjunct remnant native tree group in the upper middle section of Anzac Avenue and along Hendy Avenue creates a distinctive visual and aesthetic quality to these streetscapes. Notably, Sydney Pink Gums (Angophora costata) occur with Grey Ironbarks (Eucalyptus paniculata) indicating a transitional sandstone-shale surface geology.																	
	This community is still common in Pittwater but rare in Warringah LGA. The group includes old growth trees including one outstanding specimen Angophora costata (No.57 Anzac Avenue). Remnant canopy trees (groups) in this area are under threat from inappropriate maintenance regimes and replacement by exotics and generic native species.																	
	Other relevant heritage listings																	
	<table><tr><td>SEPP (Biodiversity and Conservation) 2021</td><td>No</td><td>Comment if applicable</td></tr><tr><td>Australian Heritage Register</td><td>No</td><td></td></tr><tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr><tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr><tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr><tr><td>Other</td><td>No</td><td></td></tr></table>	SEPP (Biodiversity and Conservation) 2021	No	Comment if applicable	Australian Heritage Register	No		NSW State Heritage Register	No		National Trust of Aust (NSW) Register	No		RAIA Register of 20th Century Buildings of Significance	No		Other	No
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RAIA Register of 20th Century Buildings of Significance	No																	
Other	No																	

Internal Referral Body	Comments
	Consideration of Application
	This application is for demolition of the existing single storey dwelling and construction of a new four level dwelling. The proposal includes the removal of a number of substantial trees.
	There are no remnant street trees on the road verge in front of this property and therefore, no heritage listed trees are affected by this application. However, the application does require the removal of a number of substantial trees, including <i>Angophora costata</i> trees. Consideration could be given to the planting of an <i>Angophora costata</i> tree in the front yard or road reserve to compensate for the trees lost.
	No objections are raised on heritage grounds and no conditions required.
	Further Comments
	Consider against the provisions of CL5.10 of WLEP 2011:
	Is a Conservation Management Plan (CMP) Required? No
	Has a CMP been provided? N/A
	Is a Heritage Impact Statement required? No
	Has a Heritage Impact Statement been provided? N/A

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	Assessment comment includes that no sites are recorded in the current development area the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Aboriginal Heritage Office provided a referral response on 27.6.2023 which can be included with any recommended conditions as applicable.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1352518S dated 4 November 2022).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	51

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment

The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use. Concern

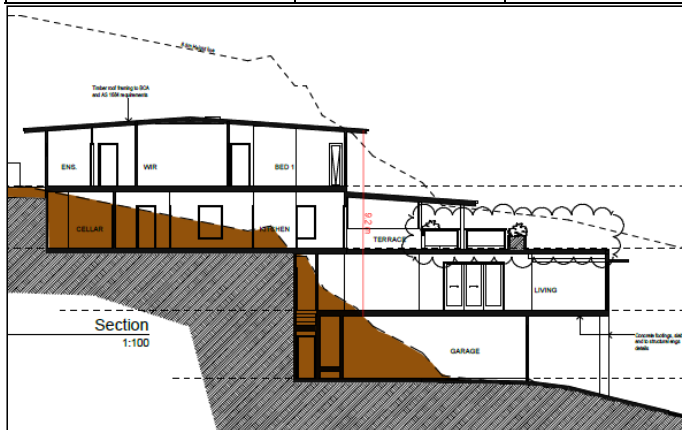
regarding potential asbestos or lead paint is managed by standard practice and statutory law for the safe handling of asbestos and demolition material, including compliance with *Australian Standards*, *WorkCover* and waste management conditions.

Warringah Local Environmental Plan 2011

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	8.5m	Roof eaves - 9.2m	8.2% (0.7m)	No



Height measured from existing ground level. The land currently has no significant excavation along the existing ground line at the high point.

Existing ground level (including excavated) consistent with the approach taken in *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*.

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.6 Exceptions to development standards

Development standard:	Building Height
Requirement:	8.5m
Proposed:	9.2m
Percentage variation to requirement:	8.2% (0.7m)

The diagram below shows the non-compliance in association with existing ground level along the forward roof edge (upper storey) and corner and mid section above the 8.5m height plane.

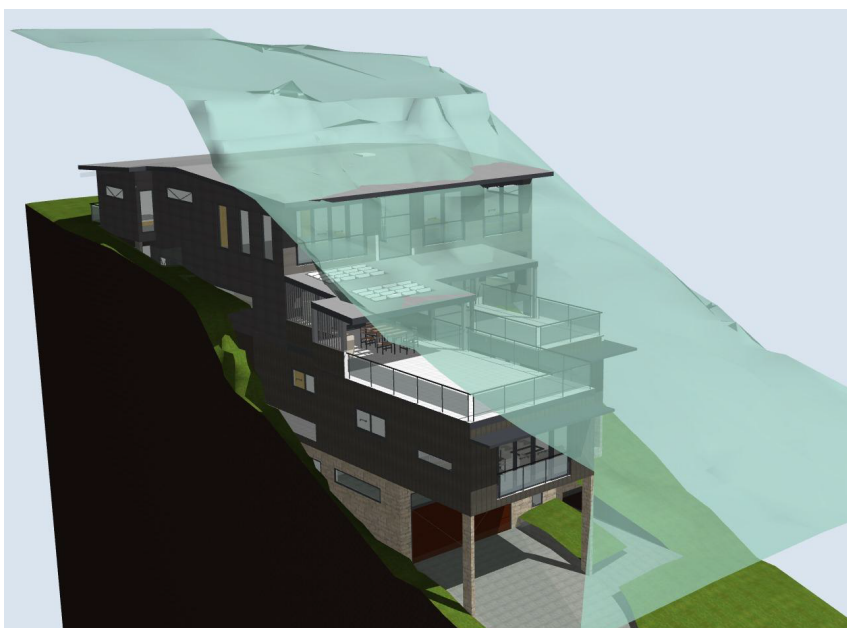


Image: Height plane variation for renewed building elements and new elements.

Assessment of request to vary a development standard

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

Clause 4.6 Exceptions to development standards

(1) The objectives of this clause are as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Comment:

Clause 4.3 – Height of Buildings development standard is not expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Secretary has been obtained.

Clause 4.6 (4)(a)(i) (Justification) Assessment

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

Comment: The Applicant's written request (attached to this report as an Appendix) has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Comment: In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. *The adjectival phrase "environmental planning" is not*

defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act (cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

Applicants Written Request

The applicants written request argues, in part:

- *"Currently very small areas of the eaves overhang exceed the maximum height of 8.5m. These areas are considered beneficial to the thermal properties of the proposed dwelling and have no effect on the overall proposal when viewed from the public space or neighbouring properties.*
- *The proposal is for a new residence which sits back into and steps up the site due to the steeply sloping topography.*
- *The adjoining properties step back up their respective sites in a similar manner so disruption of existing views will be minimum as their existing living areas/terraces sit level with or in front of our proposal.*
- *Privacy has been addressed on the South-East side of the house with the use of highlight windows and privacy screens.*
- *Visual impact on Anzac Avenue will be minimal due to topography and stepped design of the proposed residence. The slight increase of the height due to the eaves on level 1 is set back over 23 metres from the road and existing established gums on site will soften or negate any impact."*

Comment:

- The proposed height is consistent with the established streetscape along the south side of Anzac Parade.
- The height variation affects a corner of the roof as demonstrated in the height blanket diagram and therefore does not impact privacy or overshadowing or views from surrounding land. Privacy

concerns are attributed by the large elevated open deck areas and narrow setbacks, not the non-compliance with the edge of roof eaves.

- The non-compliance is some 23 metres from the road frontage. The house still extends to the front setback line at a lower storey.
- The variation is minor in nature and only present at the north-western edge of the roof line (principally eave elements).
- Overshadowing of neighbouring properties is not caused by the 8.5m height non-compliance (being 0.7m above near the mid front and NW corner).

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of an acceptable design that will not unreasonably impact the amenity of the surrounding urban or natural environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

In considering the proposal, it is noted that the bulk, height, setbacks and selected elements of the proposal have been designed in consideration to minimise elements that contribute to height and style the upper level to ensure non-complying elements do not contribute to unreasonable views and overshadowing. Generally, the height of the building and distribution of built form has been made with regard to the Warringah DCP and WLEP. The subject land is a moderately steep slope (including existing excavation) that influence the design response such as floor levels, side and front setbacks, excavation, building footprint and future amenity considerations.

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

Clause 4.6 (4)(a)(ii) (Public Interest) Assessment

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

Comment: In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of Development Standards

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of Buildings' of the WLEP 2013 are:

(1) The objectives of this clause are as follows:

a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development

Comment:

The subject site is similar to adjacent land due to the hillside position, slope and orientation to other properties along the southern side of Anzac Parade. The steepness of the site changes through the central area of the land due to a rock escarpment running across the width of the property. The existing house is constructed toward the rear of the site to gain coastal views and the new house maintains a similar single storey appearance at the back and then with a larger building footprint steps down the site. In the vicinity of the rock escarpment, the existing ground level influences the non-compliance with the roof eaves above. Similar situation occurs with other houses nearby that are constructed across the rock escarpment.

b) to minimise visual impact, disruption of views, loss of privacy and loss of solar accessComment:

Detailed solar access diagrams are provided to demonstrate that the proposed height variation does not create any unreasonable impact on solar access to adjacent land. View considerations have been made with the assessment of the proposal and the height of the building does not create any unreasonable view impact as the building remains single storey at the rear (as per the existing house) with a low pitch roof profile. Overall, the non-compliant eaves, upper wall edge and partial roof section do not cause unreasonable amenity impacts. (Other considerations of privacy, bulk and building envelope DCP controls are addressed separately in this report)

It is considered that the proposal is consistent with this objective.

c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environmentsComment:

The local terrain has a wide occurrence of bedrock close to the surface and is in an established urban area. Trees are therefore spaced between houses and generally limited to being near the road reserve. The site is not in a location where principal public views lines are gained across the site from a public beach / parkland reserve or similar. It is considered that the proposed height variation maintains consistency with this objective.

d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilitiesComment:

The overall building height is acceptable with regard to the streetscape when viewed in context with adjacent dwellings. Visual inspection along the streetscape for the southern side of Anzac Avenue between Hendy Street and Kent Street demonstrates that most properties have at least an 8m to 10m contour variation between the front and rear boundary. The subject site has a 12m variation between the front boundary and the rear boundary. It is considered that the proposed building height variation maintains consistency with this objective.

Zone Objectives

The underlying objectives of the R2 Low Density Residential zone are:

- ***To provide for the housing needs of the community within a low density residential environment***

Comment:

The proposed height variation does not offend this objective of the zone in that the use of the site remains for single detached housing and is provided with landscaping concentrated at the front that is compatible with the scale, density and pattern of surrounding development.

It is considered that the development satisfies this objective.

- ***To enable other land uses that provide facilities or services to meet the day to day needs of residents***

Comment:

This clause is not relevant to the proposal as no other (non-residential services or facilities) are proposed.

It is considered that the development satisfies this objective.

- ***To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah***

Comment:

The height variation does not impact the landscape setting of the site and the surrounding setting over the long term once landscaping is re-established for the garden areas. The higher houses to the south along Suffolk Avenue are 2m to 3m higher and overlook the roof areas of buildings/houses along Anzac Avenue. The non-compliance with the corner of the roof eaves does not adversely affect this objective.

Conclusion

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone.

Clause 4.6 (4)(b) (Concurrence of the Secretary) Assessment

Cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS 20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of Buildings Development Standard is assumed by the Local Planning Panel.

Warringah Development Control Plan

Built Form Controls

Built Form Control (Site Area: 695.9m²)	Requirement	Proposed	% Variation*	Complies
B1 Wall Height	7.2m	East 3.0m to 7.9m	9.7m (0.7m)	No

		West 3.7m to 8.5m	15.3% (1.3m)	No
B3 Side Boundary Envelope	4.0m x 45°	East Outside envelope West Outside envelope	28% (Up to 1.7m wall / screen / deck) 56% (up to 2.8m wall)	No No
B5 Side Boundary Setbacks	0.9m	East <u>Garage</u> 0.9m <u>Lower Ground</u> 2.1m to 2.7m (wall) <u>Ground</u> 2.1m (wall) to 2.7m (deck) <u>First Floor</u> 0.9m to 2.1m West <u>Basement</u> 2.6m (shower wall) to 6.9m (passage) <u>Lower Ground</u> 2.6m (office) to 5.7m (Living room) <u>Ground</u> 1.0m (wall) to 2.8m (deck) 3.5m (exca.TV room) <u>First Floor</u> 1.0m to 3.5m (wall)	N/A N/A N/A N/A N/A N/A N/A N/A	Yes Yes Yes Yes Yes Yes Yes Yes
B7 Front Boundary Setbacks	6.5m	<u>Garage</u> 6.6m to 10.6m <u>Lower Ground</u> 6.6m (wall) to 11.8m (wall) <u>Ground</u> 6.6m (deck) to 19.8m (wall) 16m (stairs) <u>First Floor</u> 19.8m to 19.8m	N/A N/A N/A N/A	Yes Yes Yes Yes
B9 Rear Boundary Setbacks	6.0m	First Floor <u>Pool & Deck</u> 1.3m to 4.8m <u>Dwelling</u>	N/A	Yes*

		6.1m to 7.1m	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (278.36m ²)	38.9% (270.7m ²)	2.7%	No

***Note:** Swimming pool and deck does not exceed 50% of the rear setback area.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	N/A	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	No	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of Non-compliance

The maximum wall height is up to 8.2m for the western side wall and 7.8m along the eastern wall. In this regard, a similar variation is being maintained as per the existing house.

Walls are not to exceed 7.2 metres from ground level (existing) to the underside of the ceiling on the uppermost floor of the building (excluding habitable areas wholly located within a roof space).

Merit Consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- ***To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes***

Comment:

The non-compliance with the wall height control relates to the southern, eastern and western wall planes and is most pronounced toward the upper corner for the bedroom level (but also applies to Bedroom 2). The non-compliance with the wall height control extends for only a short section of the wall plane on either side of the building. Generally, the visual impact from adjacent land is not unreasonable for the side wall plane. The wall height (measured to the upper ceiling) has a minimal impact on overshadowing despite the wall height non-compliance along the eastern and western side. The building achieves a minimal impact on views. (Privacy amenity, building bulk and side boundary envelope is addressed separately within this report).

- ***To ensure development is generally beneath the existing tree canopy level***

Comment:

The sandstone terrain allows limited opportunity for large canopy trees, however the site contains some mature Angophora trees and the proposal seeks to remove one of the trees that would be within the building footprint. A detailed landscape plan is provided that has various tree and shrub planting of various heights suitable for the space provided. The proposal is consistent with this objective.



Image: Photo of current front of property with high canopy trees (Central large tree is to be removed)

- ***To provide a reasonable sharing of views to and from public and private properties***

Comment:

The non-compliance with the wall height is limited to a small corner front side walls and across the front elevation due to the natural slope of the land toward Anzac Avenue. The wall height will have no unreasonable impact on view sharing with regard to public land.

- ***To minimise the impact of development on adjoining or nearby properties***

Comment:

The non-complying sections of wall are limited to the corner of the side walls and across southern (front) elevation of the building and for a short section of the eastern and western end of the side walls. Impacts on views from public domain are not unreasonably impacted in the context of the pattern of surrounding development, proposed house design and distant water views available. No unreasonable amenity impacts of overshadowing arise from the non-compliant wall height with regard to adjoining private properties private open space. (Privacy amenity, building bulk and side boundary envelope is addressed separately within this report).

- ***To ensure that development responds to site topography and to discourage excavation of the natural landform***

Comment:

The land already has minor existing excavation with the new dwelling seeking to excavate up

to 6.5m in order to accommodate the garage, storage, cellar lift and internal stair access.



- **Image: Rock escarpment across mid area of the site to be excavated for the lower storey areas.**
- ***To provide sufficient scope for innovative roof pitch and variation in roof design***

Comment:

The proposal seeks to use a low pitched skillion style roof which will assist to minimise visual impacts for dwellings overlooking the site in Suffolk Avenue. The proposal is consistent with this objective.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is **supported**, in this particular circumstance.

B3 Side Boundary Envelope

Description of Non-compliance

The control allows for a building a side boundary envelope of 4m and 45 degrees. The development breaches the control along the eastern and western elevation.

Merit Consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- ***To ensure that development does not become visually dominant by virtue of its height and bulk***

Comment:

The proposed development is generally consistent with the height of newer dwellings along Anzac Avenue. Amendments to the plans were made to address concerns regarding the non-

compliance with the side boundary envelope toward the south-east corner of the building where building is proposed over 3 levels and front deck areas. The proposal is required to maintain consistency with *Part D9 Building Bulk* and this has been satisfactorily achieved by a series of amendments. The proposal still has side boundary envelope non-compliance, but these are limited to the front corners only and are influenced by the escarpment line and angled side boundary.



Image: SBE breach is largest at NW corner. This is due to angle boundary and topography.

- ***To ensure adequate light, solar access and privacy by providing spatial separation between buildings***

Comment:

Submitted shadow diagrams (Drawing No.DA-002) demonstrate compliant solar access is provided to adjoining properties pursuant to Warringah DCP. Adequate physical separation or screening devices achieve reasonable privacy and the building does not create unreasonable solar amenity impacts on the adjoining land from the non-compliance with the envelope control. This allows for a reasonable level of amenity, solar access and privacy to be obtained from adjoining or nearby dwellings.

- ***To ensure that development responds to the topography of the site***

Comment:

The natural rock escarpment on site bends further back across the site than on No.106 Anzac Avenue and further along the street the natural shelf sits differently or has been excavated to allow residential development. The built form of the subject proposal utilises the slope for basement rooms and also steps the building up so that the majority is only 2 storeys at any one

point except at the central transition. In this regard, the dwelling reads as single storey at the rear (same as existing) and has front setbacks that step back and up the site between the lower 2 floors and the upper two floors.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is **supported**, in this particular circumstance.

D1 Landscaped Open Space and Bushland Setting

Description of Non-compliance

The application proposes 38.9% of the site area as landscaped open space which is non-compliant with the 40% requirement.

To measure the area of landscaped open space:

- a) Driveways, paved areas, roofed areas, tennis courts, car parking and stormwater structures, decks, etc, and any open space areas with a dimension of less than 2 metres are excluded from the calculation;*
- b) The water surface of swimming pools and impervious surfaces which occur naturally such as rock outcrops are included in the calculation;*
- c) Landscaped open space must be at ground level (finished); and*
- d) The minimum soil depth of land that can be included as landscaped open space is 1 metre.*

Merit Consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- ***To enable planting to maintain and enhance the streetscape***

Comment:

The development proposes 280sqm in total for the new landscaping regime, which complies with the 40% requirement of 278.4sqm for the site area (See site plan DA003 dated 31.5.2023). It is noted that along this section of Anzac Avenue has spaced tree canopies with the majority of landscaping concentrated toward the front yard of the property and larger trees along or near the road reserve. The site currently has broad landscaped front setback however the new dwelling extends from the rear 6.0m rear setback to the front 6.5m setback line. Generally, the parking is in the same position for the new garage. The site has shallow soils with small / low planting due to the presence of local bedrock. In having to deal with the slope of the land, additional terracing and pathways are required to allow for domestic access and within the site due to the sloping nature of the land. The proposal is acceptable with regard to this objective.

- ***To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife***

Comment:

There are no threatened species or remnant bushland on the site. The site contains some

spaced canopy trees (*Angophora* spp) and a natural rock escarpment along the central part of the site. New planting will include a mix of native and exotic plants to support habitat for local wildlife and provide native planting. Screen planting along the boundary lines are suitable species that assist to provide a natural buffer at ground level.

- ***To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building***

Comment:

The establishment and retention of low lying shrubs, medium high shrubs and canopy trees that can serve to soften the built form of the development. A comprehensive referral response has been provided from Council's Landscape Assessment Officer detailing the suitability of the landscaping scheme proposed. Details provided under the heading Internal Referrals within this report). The general layout of the landscaping plan includes a range of species from small trees / shrubs to taller plants including palms, Coastal Banksia, Water Gum and Lilly Pilly. In summary, the proposal is acceptable with regard to this objective.

- ***To enhance privacy between buildings***

Comment:

At the rear of the site the single storey configuration and 6m rear setback enables adequate space for privacy between adjacent land. At the front the elevated decks contain sufficient setbacks, and new screening is proposed to enhance privacy between buildings, particularly the living area of No.106 Anzac Parade (this issue is addressed separately under clause D8 Privacy) .

- ***To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants***

Comment:

The proposed development will continue to accommodate sufficient outdoor recreational opportunities to meet the needs of the occupants. This include a pool and rear garden terraces.

- ***To provide space for service functions, including clothes drying***

Comment:

The site contains a sufficient amount of space to service functions, including clothes drying.

- ***To facilitate water management, including on-site detention and infiltration of stormwater***

Comment:

Council's Development Engineer has reviewed the proposal with respect to stormwater management and raised no objections, subject to conditions.

Having regard to the above assessment, it is concluded that the proposed development is consistent

with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is **supported**, in this particular circumstance.

D8 Privacy

Merit Consideration

The development is considered against the underlying Objectives of the Control as follows:

- ***To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours***

Comment:

The proposal generally maintains similar broad outlook to the road afforded by the elevated sloping topography of the site and distant ocean views obtainable from the dwelling. The balcony and terrace elements at the front of the house are additional open space to the available rear yard. Two large balconies that form an extension to the living areas on the new Ground Floor Level were proposed and these have been substantially reduced (as per notified plans dated 9.8.2023) with fixed louvre screens and planter box landscape elements added to assist with visual and acoustic amenity. The southern side wall adjacent the outdoor BBQ has been amended to be solid screen to protect against smoke drift as well as affording noise / visual privacy along the side setback interface with No.106 Anzac Avenue. The western deck off the living area beside No.110 Anzac Avenue has been amended (reduced in area) and fixed screening and landscape planter box included to restrict its capacity and restrict overlooking capacity toward the adjacent rear yard. Selected windows are also shown as high sill or with translucent glazing and screening to assist with privacy. Conditions are included where some side windows may overlook rear POS.

- ***To encourage innovative design solutions to improve the urban environment***

Comment:

The dwelling is of a suitable design solution with regard to views and casual visual privacy following the amendments made as discussed above. Landscape elements to assist with privacy at the rear of the property due to adjacent hedging, timber paling fencing and the rear yard being at ground level with a single storey dwelling appearance when viewed from the rear. Side boundary fencing at the back of the house assists to maintain reasonable visual privacy. New fencing along the side boundaries is subject to the *Dividing Fences Act 1991* which is not administered by Council. Subject to conditions the proposal is satisfactory.

- ***To provide personal and property security for occupants and visitors***

Comment:

The design will include appropriate security including residential style fencing, garage parking, landscaped pathways (rear garden) as well as a well defined front entry area to the dwelling. The front entry area will enable personal and property security.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives of this clause and accordingly, this

assessment finds that the proposal is **supported** in this particular circumstance.

D9 Building Bulk

Merit Consideration

The development is considered against the underlying Objectives of the Control as follows:

- ***To encourage good design and innovative architecture to improve the urban environment.***

Comment:

The proposal seeks to take advantage of the slope and natural step down on the site to provide generous internal features of the dwelling given the available site area. At the rear the dwelling presents as single storey and then steps down and forward to follow the topography of the existing ground level. Excavation proposed is used to provide internal lift and stair access and dwelling element under the existing building footprint. The proposal has been amended to reduce forward mass and reduce non-compliance with the side boundary envelope. Additionally, the forward protruding decks (originally proposed) have been substantially reduced to address visual and acoustic amenity concerns of adjacent land so that they do not contribute to unreasonable visual bulk as ancillary elements to the main building mass. The proposal is satisfactory in context of the surrounding streetscape (within the visual catchment along Anzac Avenue).

To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.

- Comment:
The visual impact of the proposal when viewed from adjacent properties has been amended to improve amenity, reduce side boundary envelope non-compliance and reduce overall visual bulk. Additionally garage and mid level has been reduced during the course of the assessment to provide comparable visual bulk to the surrounding pattern of development for newer dwellings along the high side of Anzac Avenue. The proposal is consistent with this objective.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is **supported**, in this particular circumstance.

E6 Retaining unique environmental features

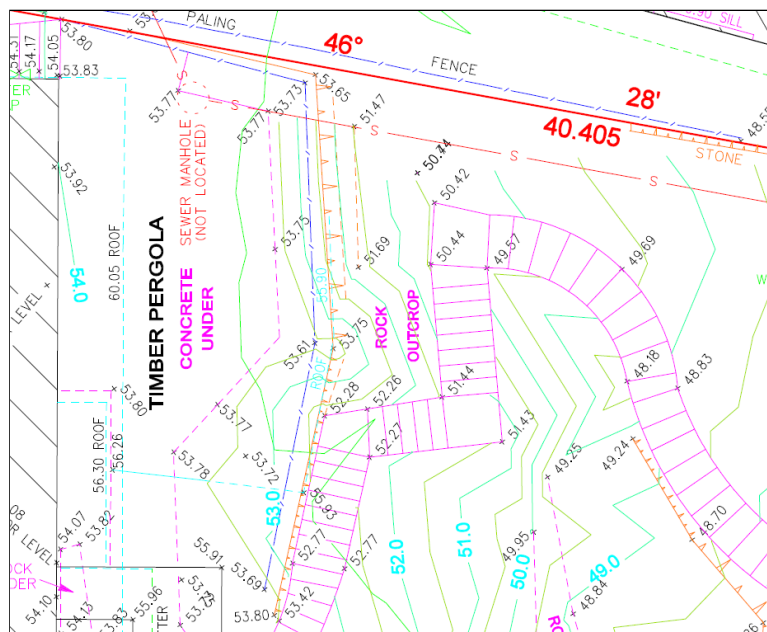
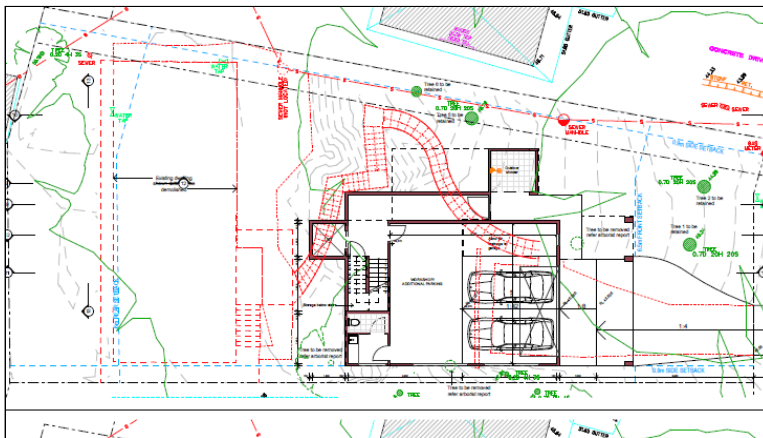
Merit Consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- ***To conserve those parts of land which distinguish it from its surroundings***

Comment:

The site has two distinctive features that are distinguishable being the presence of a number of Angophora trees and a sandstone escarpment diagonally crossing the central part of the site. The existing house is setback and above the existing rock escarpment and the new house will be excavated into and built over this steep part of the site. The slope has been used to form the main break in building bulk, by stepping the building down along this midsection. However, excavation is proposed to provide floor space elements into the slope. Any major extension to the existing house (rather than demolition) would likely build entirely over this rock ledge (as other houses have along the high side of Anzac Avenue) and require some modification / reshaping for works.



Above RL 52.5 the ground floor level sits at RL52.85 which enable the western end of the escarpment to be conserved (this is generally behind the 'gym / store' room.



- **Image : Bedrock slope to be excavated on the eastern side of the property (for garage and lower floor, lift and stairs).**
- The Angophora trees on the site are features of the property as representative of the original Sydney Sandstone Gully Forest / Ridgetop Woodland species. Nearby (to the north) there is a large patch of this type of natural vegetation within the Anzac Avenue Reserve / Salvation Army land. The proposal has been submitted with a detailed Arboricultural Assessment and Council's Landscape Officer has provided a detailed assessment of the trees. In order to comply with *Australian Standards* (1:4) gradient the driveway and parking area is cut into the site 0.5m or more near the base of the tree which will jeopardies the CRZ and tree. Additionally, the garage and entry area building (living area) is within part of the internal floor space.
- The applicant has amended the details to conserve trees within the front setback and those close to the side setback. One large Angophora close to the existing drive and proposed garage / front of the house is proposed to be removed. Site inspection shows this tree is impacting the existing driveway but it is essentially a healthy mature tree. Conserving this tree would require some substantial redesign and change or reduced floor space. Compensatory measures to replace this tree with three (3) new advanced Angophora trees would assist in the long term canopy restoration. Two Angophora (2) trees within the site (suitably clear of building/services or fence lines) and one (1) within the road reserve (suitably clear of any services / kerb) is recommended.



Image: Tree '3' on RHS and existing driveway deformation.

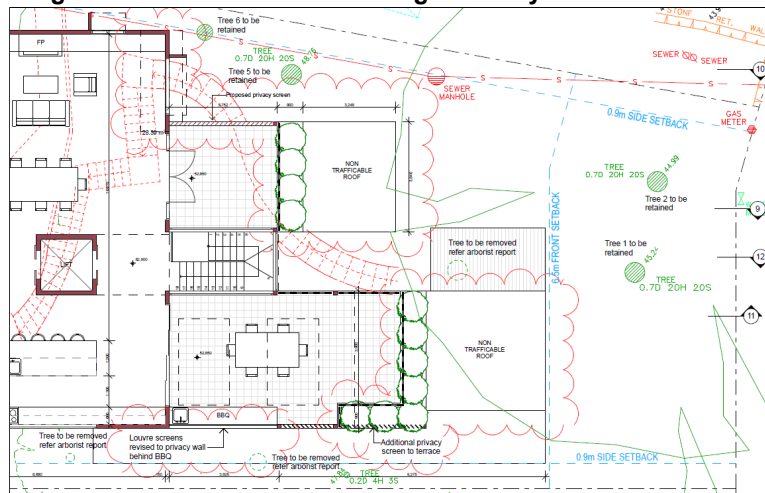


Image: Tree '3' is in the front central area of site. Other trees shaded green (dot) are being retained.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is **supported**, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$27,770 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,777,042.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case;

and

- b) There are sufficient environmental planning grounds to justify the contravention.

2) The proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

PLANNING CONCLUSION

This application has been referred to the Northern Beaches Local Planning Panel (NBLPP) in accordance with the Ministerial Directions for applications where the applicant is a relative of a member of staff.

The topography of the site is steep and irregular due to a sandstone escarpment that diagonally crosses the middle area of the site.

The Clause 4.6 height variation to the 8.5m maximum height is minor and does not create unreasonable impact on views or solar access and the like. The variation arises from the site having a sandstone escarpment across the central area of the site creating a 8.2% variation for a small section of the building, 0.7m above being 9.2m high and limited to the mid front wall section, eaves and north-western corner of the roof. The Clause 4.6 is assessed as being well founded and is supported.

The critical assessment issues included privacy considerations, side boundary envelope non-compliance, building bulk and potential residential amenity impacts on adjacent property by the elevated decks and scale of the building comparative to adjacent development. These have been addressed by way of amended plans, which also address submission issues raised during the notification (and re-notification periods).

Other Internal Referral issues associated with driveway levels, stormwater and landscaping (impact on native *Angophora* trees) have been resolved by supplementary information.

A series of amendments made during the assessment period assisted to address landscaping, privacy screening (windows and decks), dwelling bulk and reduce non-compliances with the Warringah DCP.

Therefore, the proposal is supported for approval, subject to conditions.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 *Height of Buildings* development standard pursuant to clause 4.6 of the WLEP 2011 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2022/2021 for Demolition of an existing dwelling and the construction of a new dwelling with swimming pool on land at Lot 66 DP 212835, 108 Anzac Avenue, COLLAROY, subject to the conditions printed below:

Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

The development must be carried out in compliance with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA001 / K Site Plan	9.8.2023	Gelder Group Architects
DA002 / K Plans	9.8.2023	Gelder Group Architects
DA003 / K Plans	9.8.2023	Gelder Group Architects
DA004 / K Elevations	9.8.2023	Gelder Group Architects
DA005 / K Sections	9.8.2023	Gelder Group Architects
DA006 / G Demolition and Excavation Plan	14.11.2022	Gelder Group Architects

Engineering Plans*		
Drawing No.	Dated	Prepared By
SW01 / B General Notes	4.11.2022	Approved Consulting

		Engineers
SW02 / B Site Drainage Plan*	4.11.2022	Approved Consulting Engineers
SW03 / B LGF and GF Drainage Plan*	4.11.2022	Approved Consulting Engineers
SW04 / B SW04 Lower and Upper Roof Drainage Plan*	4.11.2022	Approved Consulting Engineers
SW05 / B Details	4.11.2022	Approved Consulting Engineers
SW06 / B Details	4.11.2022	Approved Consulting Engineers
SW07 / B Details	4.11.2022	Approved Consulting Engineers
SW08 / B Sediment and Erosion Control Plan*	4.11.2022	Approved Consulting Engineers

*Engineering plans are to be updated to correspond with the stamped approved Architectural drawings for construction work.

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate	4.11.2022	Building Sustainability Assessment
Arboricultural Impact Assessment	20.9.2022	Tree Survey
Geotechnical Report J4537	28.10.2022	White Geotechnical Group

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

c) The development is to be undertaken generally in accordance with the following:

Landscape Plans*		
Drawing No.	Dated	Prepared By
Sht 101 / A Master Landscape Plan*	11.11.2022	Jamie King Landscape Architect
Sht 102 / A Front Yard Detail Plan*	11.11.2022	Jamie King Landscape Architect
Sht 103 / A Backyard Detail Plan*	11.11.2023	Jamie King Landscape

	Architect
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*Landscape Plans are to be updated to correspond with the stamped approved Architectural drawings for construction work.

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan 2/2066/C03/01	October 2022	Gelder Architects

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

2. Compliance with Other Department, Authority or Service Requirements

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	8.12.2022
Aboriginal Heritage Office	AHO Referral Response	27.6.2023

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

3. Approved Land Use

Nothing in this consent shall authorise the use of site / onsite structures / building as detailed on the approved plans for any land use of the site beyond the definition of a dwelling house, in accordance with the Dictionary of the Warringah Local Environmental Plan 2011, as follows:

"dwelling house" means a building containing only one dwelling."

Any variation to the approved land use and / occupancy of any part of the building beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent.

4. Prescribed Conditions

- All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (i) showing the name, address and telephone number of the Principal Certifier for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

5. No Approval for Secondary Dwelling

No approval is granted or implied under this Development Consent for the use of any part of the dwelling house for the purpose of a secondary dwelling or separate occupancy. Built in

cooking facilities are not permitted to be installed, other than those shown in the designated kitchen area.

Reason: To ensure compliance with the terms of this consent.

6. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

 - (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
 - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

- (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

FEES / CHARGES / CONTRIBUTIONS

7. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$27,770.42 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$2,777,042.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

8. Security Bond

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifier prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.northernbeaches.nsw.gov.au).

Reason: To ensure adequate protection of Council's infrastructure.

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE**9. On-Site Stormwater Detention Details**

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Approved Consulting Engineers, drawing number 2022127 SW01, SW02, SW03, SW04, SW05, SW06 and SW07 Revision B, dated 4/11/22. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

1. The detention tank levels are to be amended to suit the revised driveway levels.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater and stormwater management arising from the development.

10. Vehicle Crossings Application

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 3 metres wide in accordance with Northern Beaches Council Standard Drawing Maximum High Profile in accordance with Section 138 of the Roads Act 1993.

Note, driveways are to be in plain concrete only.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

A Council approval is to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

11. Boundary screen planting

Landscaped screen planting shown along the rear boundary (if being replaced) and new planting along the side boundary setbacks shall be limited to native shrub / screening plants that have a natural maximum mature growth height of 4.0m

Details are to be shown, to the satisfaction of the Certifying Authority, on the Landscape plans prior to the issue of the Construction Certificate.

Reason: To ensure reduce impact on views and overshadowing to adjacent property from dense boundary planting.

12. Vehicle Driveway Gradients

The Applicant is to ensure driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility. Access levels across the road reserve are to comply with the allocated vehicle profile detailed in this consent.

Details demonstrating compliance are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

Reason: To ensure suitable vehicular access to private property.

13. **Compliance with Standards**

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards.

14. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

15. **Privacy Screening**

The privacy screening shown is to be installed as shown for:

- i) Boundary landscape screen planting as per Landscape Plan Sht-101 Issue A (subject to plant species height conditions in this consent).
- ii) Fixed privacy screens and the planter box planting for the deck areas off the kitchen and living areas on the Ground Floor Level as per Architectural plan DA003 Issue K. The fixed angle louvres are to be fitted as shown on the approved architectural drawings.
- iii) Translucent glazing is to be used for the western side wall windows for the main living room at Ground Floor Level.
- iv) Translucent glazing and screens are to be installed as annotated as per Architectural plan DA003 Issue K.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: In order to maintain privacy to the adjoining properties.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

16. **Project Arborist**

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged prior to any commencement of works on site to provide tree protection measures in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, and in particular:

- a) relevant parts of section 5 Tree Protection Plan
- b) additionally, the tree protection fencing identified in the Tree Protection Plan shall be extended to enclose tree 1 as well,
- c) the project Arborist shall be in attendance to supervise any demolition, excavation and construction works within the tree protection zone of trees 1, 2, 5 and 6, and any other existing tree as determined by the Project Arborist.

All tree protection measures specified must:

- a) be in place before work commences on the site, and
- b) be maintained in good condition during the construction period, and
- c) remain in place for the duration of the construction works.

The Project Arborist shall provide certification to the Certifier that all tree protection measures under AS4970-2009 have been satisfied, and the recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained identified as trees 1, 2, 5 and 6 shall be recorded, including at commencement, during the works and at completion.

Note:

Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: Tree protection.

17. Tree Removal Within the Property

This consent approves the removal of existing trees on the subject site as listed below:

- a) tree '3' and tree '4' - *Angophora costata*,
- b) no other existing prescribed tree is to be removed,
- c) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised development works.

18. Pre-Construction Dilapidation Report

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifier prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Property / Properties:

- No.106 Anzac Avenue Collaroy
- No.110 Anzac Avenue Collaroy
- No.82 Suffolk Avenue Collaroy

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifier and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner,

the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifier must be satisfied that the requirements of this condition have been met prior to commencement of any works.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

DURING BUILDING WORK

19. Tree and Vegetation Protection

- a) Existing trees and vegetation shall be retained and protected, including:
 - i) all trees within the site not approved for removal, including trees and vegetation nominated for retention on the approved Plans,
 - ii) existing trees 1, 2, 5 and 6 as identified in the Arboricultural Impact Assessment report and in proximity to development works, shall be retained and protected,
 - iii) all trees and vegetation located on adjoining properties,
 - iv) all trees and vegetation within the road reserve.
- b) Tree protection shall be undertaken as follows:
 - i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
 - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
 - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
 - vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
 - viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
 - ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
 - x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
 - xi) the tree protection measures specified in this clause must: i) be in place before work

commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

c) The arboricultural works listed in a) and b) are undertaken and certified by an Arborist/Project Arborist as complaint to AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

20. **Road Reserve**

The applicant shall ensure the public footways and roadways adjacent to the site are maintained in a safe condition at all times during the course of the work.

Reason: Public safety.

21. **Removing, Handling and Disposing of Asbestos**

During works (including site preparation) the natural rock escarpment section behind the "gym / store" wall (generally west and below RL52.5 is to be retained in situ. Protective marking and measures are to be put in place during works to minimise excavation damage during works to the satisfaction of the Certifying Authority.

Reason: For the protection of the environment.

22. **Geotechnical Requirements**

All recommendations (if any) included in the Geotechnical Report referenced in Condition 1 of this consent are required to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

23. **Demolition Works - Asbestos**

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifier, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

24. Survey Certificate

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier.

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

25. Waste Management During Development

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

Details demonstrating compliance must be submitted to the Principal Certifier.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE**26. Required Tree Planting**

Trees shall be planted in accordance with the following:

- Two (2) *Angophora Costata* generally within the landscape area in front of the house within 10 metres (m) of the front boundary. Tree planting shall be from minimum pot size of 20 litres.

Tree planting shall be located within a 4m² deep soil area wholly within the site and be located a minimum of 2 metres from existing and proposed buildings and other trees.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of any Occupation Certificate.

Reason: To maintain environmental amenity for long term tree habitat / canopy.

27. Street Tree Planting

Street trees shall be planted in accordance with the following:

- One (1) *Angophora Costata* generally in the centralised area of the landscape road reserve along the front boundary. Tree planting shall be from minimum pot size of 20 litres.

Tree shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained including a four post tree guard and watered until established and shall be located at least 1.0 metre from any structures including driveways, services, kerbs and paths.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of any Occupation Certificate.

Reason: To maintain environmental amenity.

28. Landscape Completion

Landscape works are to be implemented in accordance with the approved Landscape Plan(s), and inclusive of the following conditions:

- a) landscape works are to be contained within the legal property boundaries,
- b) all tree planting (unless specified within other tree planting conditions of this consent) within the property shall be a minimum pre-ordered planting size of 75 litres or as otherwise scheduled if greater in size; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings and other trees or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
- c) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone.

Prior to the issue of an Occupation Certificate, details (from a landscape architect, landscape designer or qualified horticulturalist) shall be submitted to the Principal Certifier, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

29. Condition of Retained Vegetation

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees in proximity to the works required to be retained (trees 1, 2, 5, and 6), including the following information:

- a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
- b) extent of damage sustained by vegetation as a result of the construction works,
- c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree and vegetation protection.

30. Post-Construction Dilapidation Report

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To maintain proper records in relation to the proposed development.

31. **Geotechnical Certification Prior to Occupation Certificate**

A Geotechnical Engineer or Engineering Geologist is to provide written confirmation that they have inspected the site during construction or reviewed information relating to the construction and that they are satisfied that development referred to in the development consent has been constructed in accordance with the intent of the Geotechnical Report referenced in Condition 1 of this consent.

Written certification is to be provided to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

32. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**

The Applicant shall lodge the Legal Documents Authorisation Application with Council. The application shall include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), and Civil Engineers' certification.

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgment with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user is to be submitted.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

33. **House / Building Number**

House/building number is to be affixed to the fence / letterbox to be readily visible from the public domain.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: Proper identification of buildings.

34. **Waste Management Confirmation**

Prior to the issue of an Occupation Certificate, evidence / documentation must be submitted to the Principal Certifier that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES**35. Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting. If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan(s) and any conditions of consent.

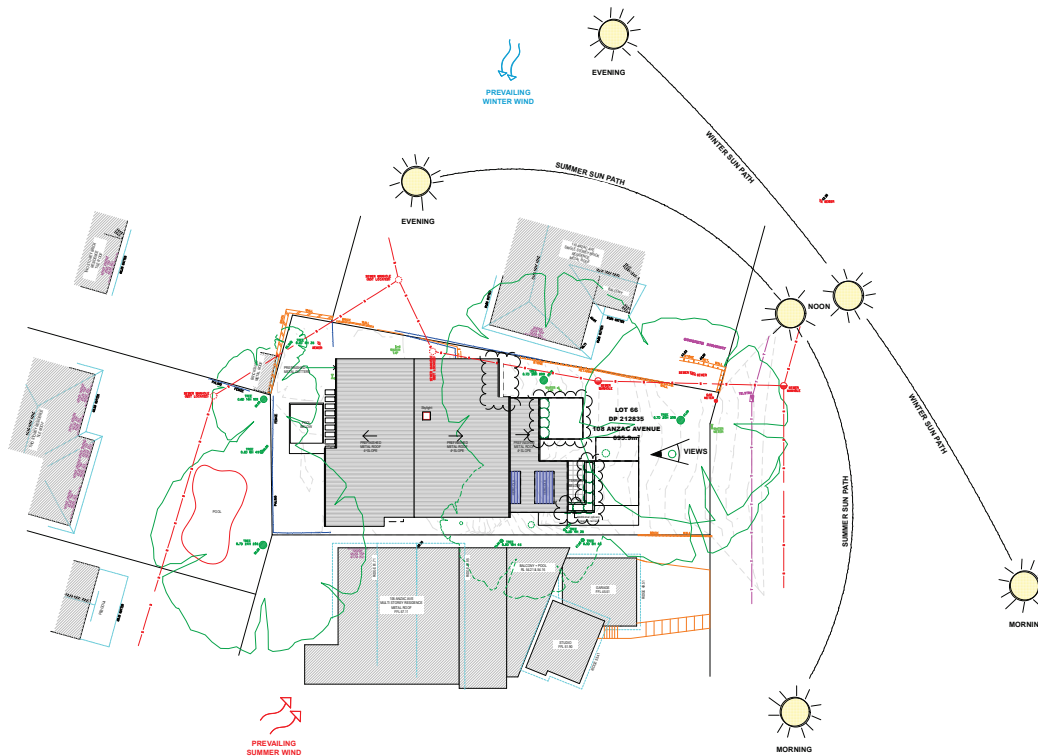
The approved landscape planted areas shall in perpetuity remain as planting under the development consent, and shall not be replaced with any hard paved surfaces or structures

Reason: To maintain local environmental amenity.

36. Swimming Pool/Spa Motor Noise

The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.



108 Anzac Avenue Collaroy	
SUMMARY OF BASIS COMMITMENTS	
This is a summary of the BASIS Commitments as detailed in the BASIS Foundation. It is not a BASIS Foundation document and should not be used as a basis for any decision.	
WATER COMMITMENTS	
1. Water Supply	Yes
2. Water Treatment	Yes
3. Water Recycling	Yes
4. Water Conservation	Yes
5. Water Quality	Yes
6. Water Quantity	Yes
7. Water Use	Yes
8. Water Disposal	Yes
9. Water Pollution	Yes
10. Water Storage	Yes
11. Water Distribution	Yes
12. Water Treatment	Yes
13. Water Recycling	Yes
14. Water Conservation	Yes
15. Water Quality	Yes
16. Water Quantity	Yes
17. Water Use	Yes
18. Water Disposal	Yes
19. Water Pollution	Yes
20. Water Storage	Yes
21. Water Distribution	Yes
22. Water Treatment	Yes
23. Water Recycling	Yes
24. Water Conservation	Yes
25. Water Quality	Yes
26. Water Quantity	Yes
27. Water Use	Yes
28. Water Disposal	Yes
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98. Water Disposal	Yes
99. Water Pollution	Yes
100. Water Storage	Yes

Proposed New Residence
108 Anzac Ave
Collaroy
for
R & S Hill



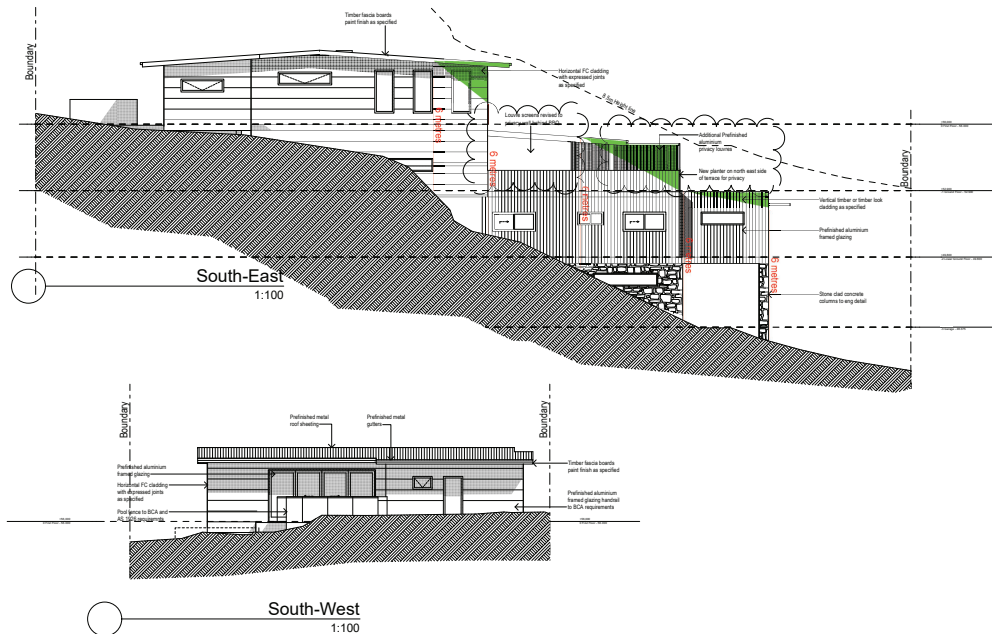
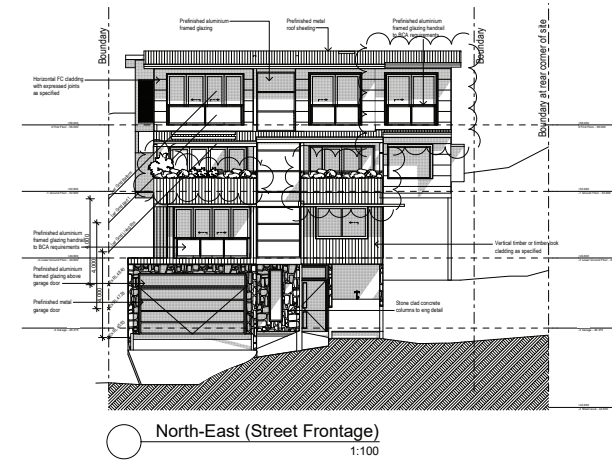
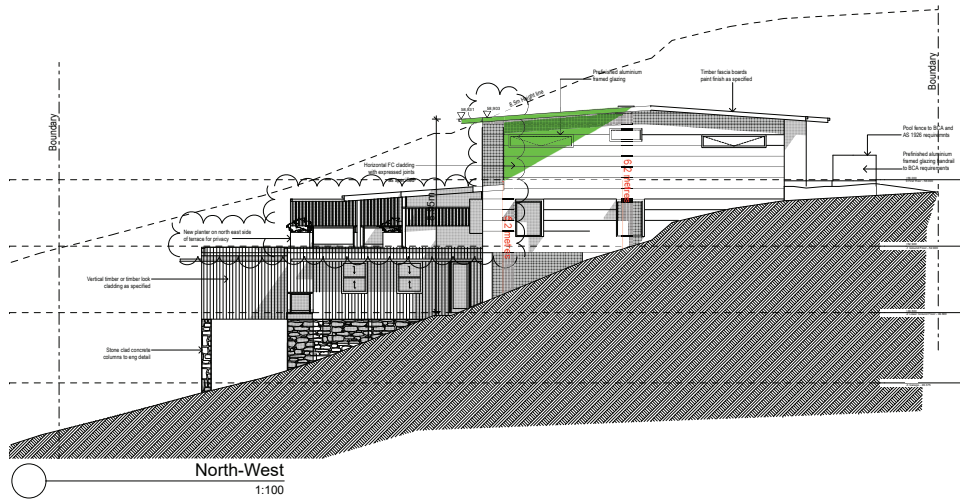
Level 2 19-23 Bridge Street PYMBLE NSW 2073 AUSTRALIA
T: (02) 9640 2400 E: info@gelder.com.au W: gelder.com.au
ABN 46 586 878 627 NSW APD REG-ARCHITECT GELDER #0128

Site Plan & Analysis

The property is shown in the context of the surrounding area. The site is located at the intersection of Anzac Avenue and Bridge Street. The site is bounded by Anzac Avenue to the north, Bridge Street to the east, and the existing residence to the south and west. The site is shown in the context of the surrounding area, including the existing residence and the surrounding streets.

Project No:	2054	Date:	June 2022	Scale:	1:200
Drawing No:	DA001	Date:	10-Aug-23	Scale:	1:200

AT ORIGINAL SIZE



1	Pre-finished aluminium framed glazing	20/09/2023
2	Pre-finished metal roof cladding	20/09/2023
3	Pre-finished aluminium framed glazing horizontal to BCA requirements	20/09/2023
4	Horizontal FC cladding with increased joints as specified	20/09/2023
5	Pre-finished aluminium framed glazing above garage door	20/09/2023
6	Pre-finished metal garage door	20/09/2023
7	Vertical timber or timber look cladding as specified	20/09/2023
8	Stone clad concrete columns to wing detail	20/09/2023
9	Timber fascia boards part finish as specified	20/09/2023
10	Horizontal FC cladding with increased joints as specified	20/09/2023
11	Locally sourced natural stone masonry cladding	20/09/2023
12	New glazing on north side of house for privacy screening	20/09/2023
13	Vertical timber or timber look cladding as specified	20/09/2023
14	Pre-finished aluminium framed glazing	20/09/2023
15	Stone clad concrete columns to wing detail	20/09/2023
16	Timber fascia boards part finish as specified	20/09/2023
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18	Locally sourced natural stone masonry cladding	20/09/2023
19	New glazing on north side of house for privacy screening	20/09/2023
20	Vertical timber or timber look cladding as specified	20/09/2023
21	Pre-finished aluminium framed glazing	20/09/2023
22	Stone clad concrete columns to wing detail	20/09/2023
23	Timber fascia boards part finish as specified	20/09/2023
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25	Locally sourced natural stone masonry cladding	20/09/2023
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98	Pre-finished aluminium framed glazing	20/09/2023
99	Stone clad concrete columns to wing detail	20/09/2023
100	Timber fascia boards part finish as specified	20/09/2023

Proposed New Residence
at
108 Anzac Ave
Collaroy
for
R & S Hill



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Elevations

The property of this drawing and in the concrete is not to be used for any other purpose. Any modification or alteration to the drawing is the client's responsibility. The client is responsible for ensuring that the drawing is used for its intended purpose. The client is responsible for ensuring that the drawing is used for its intended purpose. The client is responsible for ensuring that the drawing is used for its intended purpose.

Project No:	2054	Date:	June 2023	Scale:	1:100, 1:200	Sheet:	K
Drawing No:	DA004	Scale:	1:100, 1:200	Sheet:	10-Aug-23		

AT ORIGINAL SIZE



Suite 22 19-23 Bridge Street
PYMBLE NSW 2073 AUSTRALIA

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Clause 4.6 Exception to Development Standards

New Residence
at
108 Anzac Avenue
COLLARROY

Revision B

*November 2022
JN2054*

G e l d e r G r o u p A r c h i t e c t s



Introduction

This Clause 4.6 Submission is prepared in support of a Development Application which seeks approval for the demolition of the existing dwelling and construction of a new dwelling and swimming Pool on the land identified as Lot 66 DP212835 and known as 108 Anzac Ave, Collaroy.

A variation is sought in respect of Clause 4.3(2) of the Warringah LEP 2011 - Height of Buildings;

Clause 4.3 provides:

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map

Currently very small areas of the eaves overhang exceed the maximum height of 8.5m. These areas are considered beneficial to the thermal properties of the proposed dwelling and have no effect on the overall proposal when viewed from the public space or neighbouring properties.

Assessment of the proposed Variation

The following is an assessment of the proposed variation against the requirements of Clause 4.3.

What is the name of the environmental planning instrument that applies to the land?

Warringah Environmental Plan (LEP) 2011

What is the zoning of the land?

The zoning of the land is R2 Low-Density Residential Zone.

Objectives of zone

- To provide for the housing needs of the community within a low-density residential environment.

Comment;

This proposal is to provide a new single residence for a family which has outgrown the existing 1960's house and allow the owners to continue living in the area they enjoy.

- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

Comment;

The proposed residence fits in with all surrounding dwellings and will not adversely affect any existing services or utilities in the street.

- To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.

Comment;

The proposed single residence will maintain a number of the existing trees while enhancing the landscaping with new natives, refer to landscape drawings by Jamie King Landscape Architect SHT 101-103.



What is the development standard being varied

The development standard sought to be varied is specified under clause 4.3 Height of Buildings in the Warringah LEP 2011.

Clause 4.3 Height of Buildings

(1) The objectives of this clause are as follows —

- (a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,
 - (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,
 - (c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,
 - (d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

Under Clause 4.3 Height of Building Map the sites maximum building height is 8.5m

Discussion of Clause 4.3 Height of buildings in relation to 108 Anzac Ave, Collaroy

(1) The objectives of this clause are as follows —

- (a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,

Comment;

The proposal is for a new residence which sits back into and steps up the site due to the steeply sloping topography. The proposal is for a basement level garage with three levels over and reads as a single level residence when viewed from the rear due to the steepness of the site. The surrounding developments are also single residences and the majority of on the south western side of the street are similar in nature, providing accommodation to these existing residents over a number of levels with much articulation so our proposal will blend in well to its surroundings and the slight variation to the height will have no detrimental effect on nearby development.

- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,

Comment;

The proposed new residence steps up a steeply sloping site as noted above and as can be seen from the North-West and South-East elevations never reads more than two-levels and a single level residence when viewed from the rear or South-West elevation. The adjoining properties step back up their respective sites in a similar manner so disruption of existing views will be minimum as their existing living areas/terraces sit level with or in front of our proposal. Privacy has been addressed on the South-East side of the house with the use of highlight windows and privacy screens. The lower ground floor has been redesigned to give further separation with the neighbour at 106 Anzac Ave. Both dwellings at 106 and 110 have their garages adjacent to our site thus adding to separation between dwellings. A 3D shadow diagram (DA009) has now been added which shows that the proposed new residence has minimal effect on the solar access to 106 Anzac Ave and the slight increase in height due to the eaves overhang has a very slight increase in shadowing to the terrace of 106 Anzac Ave between 1-2pm.

- (c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,



Comment;

As noted above the building has been designed to step up a steeply sloping site and hug the existing topography, the slight increase in height due to the eaves overhang on the level 1 roof is very minimal and will not have any adverse impacts on coastal or bush environments whilst providing the advantage of shading/cooling to level 1 bedrooms thus reducing heat loads on the glass.

(d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.

Comment;

Visual impact on Anzac Avenue will be minimal due to topography and stepped design of the proposed residence. The slight increase of the height due to the eaves on level 1 is set back over 23 metres from the road and existing established gums on site will soften or negate any impact.

Discussion related to Clause 4.3 Height of Building

The height variation is shown in Figure 1 and is only a small section of the level 1 eave which benefits the solar heat load on the proposed residence as well as providing a positive contribution to the aesthetic of the dwelling

As can be seen from the elevation the slight variation to the height limit is caused by the steepness of the topography which has a fall from back to front of 12m.

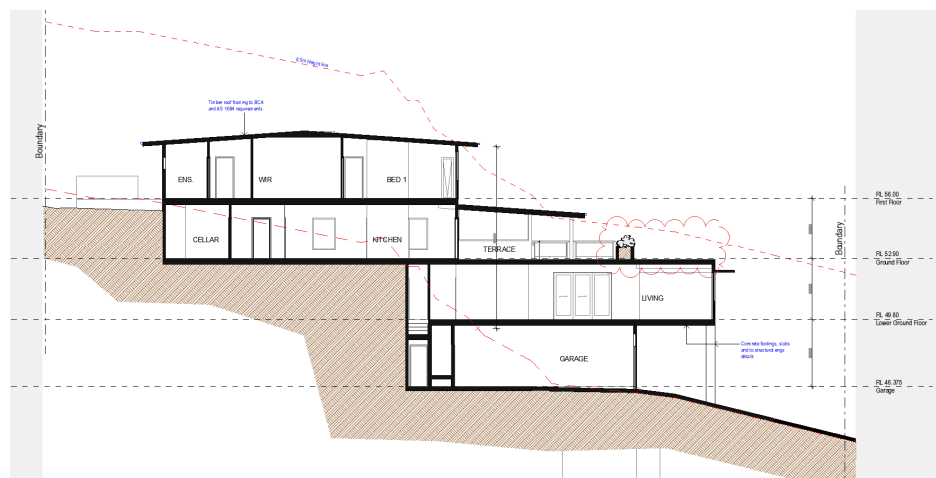


Figure 1 Section 11. The 8.5m height plane is shown and the height of the slight eave exceedance

Extent of Variation

- The control allows for a height of 8.5m.
- The requested variation to the control is 9.20m at the worst point along the length of the eave and 8.01m at the lowest point due to the extreme topography of the site.
- Height Breach 700mm.
- Height breach in % form, 8.23%

**Discussion of relevant provisions under Clause 4.6**

Clause 4.6 states:

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Given that the maximum height development standard is not identified under Clause 4.6(8) it is therefore not specifically excluded from the operation of Clause 4.6 of Warringah LEP 2011 and consent can be granted.

- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

As noted, the proposed residence slightly exceeds the maximum permitted height of buildings standard development under clause 4.3 of the Warringah LEP 2011. This written request has been prepared to outline why strict compliance is considered to be unreasonable and unnecessary in the circumstances of this case and that there are sufficient environmental planning grounds to justify contravening the development standard.

- (4) Development consent must not be granted for development that contravenes a development standard unless—*
- (a) the consent authority is satisfied that—*
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) the concurrence of the Planning Secretary has been obtained.*

The consent authority can be satisfied that this request adequately addresses the matters that: The proposed development is in the public interest because it is consistent with the objectives of the Height of Buildings Standard and the objectives for development in the R2 Low-Density Residential zone.

The concurrence of the Secretary can be assumed in this particular instance given the minor extent of the variation and council's delegations.

- (5) In deciding whether to grant concurrence, the Planning Secretary must consider—*



- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 (b) *the public benefit of maintaining the development standard, and*
 (c) *any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.*

Concurrence can be assumed by council in this particular instance on the basis that:
 The contravention of the height of buildings standard does not raise any matter of significance for State or regional environmental planning, and
 The contravention does not undermine the importance of retaining the development standard and all other relevant matters have been addressed in this written request.

This request to alter the strict adherence to Clause 4.3 responds to the following matters:

- That compliance with the development standard is unreasonable or unnecessary, in the circumstances of this case, and
- That there are sufficient environmental planning grounds to justifying contravening the development standard.

Compliance with the Height of Building development standard prescribed in clause 4.3 Height of Buildings Warringah LEP 2011 is unreasonable and unnecessary in the circumstances of this case as the development achieves the objectives of the Clause as noted above in the **Discussion of Clause 4.3 Height of buildings in relation to 108 Anzac Ave, Collaroy.**

Is compliance with the development standard unreasonable or unnecessary in the circumstances of this case.

Pursuant to Clause 4.6 of the WLEP 2011 strict compliance with the requirements of Clause 4.3 is both unreasonable and unnecessary in the circumstances of this case on the basis that the underlying objective of the standard is satisfied notwithstanding the slight non-compliance.

- The proposal is compatible with the height and scale of surrounding and nearby development
- The proposal will not result in any unreasonable visual impacts, disruption of views, loss of privacy or loss of solar access.
- The proposal will not result in any unreasonable streetscape impacts or public spaces.
- The site is located on a steep site with an average height increase from front boundary to rear boundary of 12m.
- The proposed architectural design of the development in combination with the proposed materials and finishes will provide for a high quality built form outcome for the site which will make a positive contribution to the character of the locality, particularly when viewed from the street and public domain.
- The proposal will not result in any unreasonable amenity impacts upon adjoining properties particularly in relation to overshadowing or a loss of privacy.
- The proposal is consistent with the site stepping down to follow the natural ground lines with bulk and form responding to neighbouring properties for minimal impact.



The proposal remains consistent with the objectives of the R2 Low Density Residential Zone, despite the non-compliance 4.3 (2) and is compliant with the objectives of Clause 4.3 (1) a, b, c and d.

The proposal provides for an architectural designed house responding to the nature of the site, the surrounding environment and neighbouring properties. The proposed setbacks, forms, scale, articulation and bulk provides a high level of design that is sympathetic to the stepping of the natural environment with only minor elements intruding into the 8.5m height limit.

Conclusion

Development standards are a means of implementing planning purposes for a development or area. A development strictly complying with the numerical standard would not discernibly alter the scale of the building or improve the amenity of surrounding development or the public domain. The proposed non-compliance is minor and occurs in a small area of the proposed development as demonstrated in this assessment. This submission satisfies the provisions of the remainder of the WLEP 2011 as it has been demonstrated that compliance with the height of buildings development standard is both unnecessary and unreasonable in the circumstances of this case and there is sufficient planning grounds to justify contravening the standard.

It is therefore considered appropriate to exercise flexibility provided by Clause 4.6 in the circumstances of this application and that therefore this proposal is worthy of approval.



Clause 4.6 Variation

108 Anzac Avenue, Collaroy

5.0 NON PUBLIC MEETING ITEMS

ITEM 5.1	DA2023/0472 - 64 BIRKLEY ROAD, MANLY - DEMOLITION WORKS AND CONSTRUCTION OF A GARAGE AND SECONDARY DWELLING, AND ALTERATIONS AND ADDITIONS TO THE EXISTING DWELLING
AUTHORISING MANAGER	Rod Piggott
TRIM FILE REF	2023/482506
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan & Elevations 3 ↓ Clause 4.6

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the State Environmental Planning Policy (Housing) 2021 development standards pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2023/0472 for demolition works and construction of a garage and secondary dwelling, and alterations and additions to the existing dwelling on land at Lot 1 DP 105207, 64 Birkley Road, MANLY subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0472
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Responsible Officer:	Grace Facer
Land to be developed (Address):	Lot 1 DP 105207, 64 Birkley Road MANLY NSW 2095
Proposed Development:	Demolition works and Construction of a garage and secondary dwelling, and alterations and additions to the existing dwelling
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	James Robert Arnold Jennifer Louise Arnold
Applicant:	James Robert Arnold Jennifer Louise Arnold

Application Lodged:	09/05/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	17/05/2023 to 31/05/2023
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	Yes - SEPP (Housing): Clause 53 - Non-discretionary development standards
Recommendation:	Approval

Estimated Cost of Works:	\$ 562,624.00
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EXECUTIVE SUMMARY

This development application seeks approval for demolition works and the construction of a garage and secondary dwelling, and alterations and additions to the existing dwelling.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to the application proposing a variation to a non-discretionary development standard contained within State Environmental Planning Policy (Housing) 2021. The SEPP requires a minimum lot size of 450m² for a

secondary dwelling, with the site being only 341.5 m², the application involves a variation to the minimum site area for a detached secondary dwellings of 24.1% or 108.5m².

The applicant has submitted a written Clause 4.6 variation request in support of the variation to the minimum site area. As detailed within the body of the report, it is considered that the applicant's written Clause 4.6 request to vary the site area specified by the SEPP is justified, given the specific circumstances that the proposed secondary dwelling is limited to 35.6m², will replace an existing detached garage with storage loft above at the rear of the site which maintains largely the same built form and the character of other similar developments fronting Lawson Place (rear lane) on which it is proposed. In addition the total floorspace on the site is compliant and MLEP permits secondary dwellings without stipulating a minimum lot size.

Furthermore, the Clause 4.6 request for the non-compliance with the minimum lot size arises from the nature of small lots within the locality but is considered acceptable in these circumstances due to context with the established pattern of development with similar built form character and prevalence of secondary dwellings within the immediate locality.

The application was on notification for 14 days, in accordance with Council's Community Participation Plan, and two (2) submissions were received in response. Issues identified within the submissions relate mainly to acoustic and visual privacy impacts upon adjoining properties.

The proposal is considered to satisfy the relevant planning controls and having an acceptable impact on the amenity of surrounding and nearby properties. This report concludes with a recommendation that the NBLPP grant approval to the development application, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development comprises of the following works:

- Demolition of the existing detached two storey garage with loft above
- Construction of a new detached double garage with secondary dwelling on the upper floor
- Alterations and additions to the principal dwelling including internal works, new pergola and paving to patio, new awning over balcony and privacy wall, infill existing skylights, and new windows on northern elevation

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;

- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

SITE DESCRIPTION

Property Description:	Lot 1 DP 105207, 64 Birkley Road MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the eastern side of Birkley Road. The site has two frontages, with its secondary rear frontage presenting to Lawson Place.</p> <p>The site is regular in shape with a frontage of 7.010m along Birkley Road and Lawson Place, and a depth of 48.77m. The site has a surveyed area of 341.5m².</p> <p>The site is located within the R1 General Residential zone from MLEP 2013 and accommodates a one and two storey dwelling house presenting to Birkley Road and a detached double garage with a loft above presenting to Lawson Place.</p> <p>The site is generally flat and contains lawn areas, garden beds and one tree within the rear yard.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by residential dwelling houses, many of which have detached garages and secondary dwellings presenting to Lawson Place. Apartment blocks are also located in close proximity to the subject site.</p>

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

BA76/97

Alterations and additions to the existing dwelling and the construction of a detached garage with storage loft above approved on 10 April 1997

Application History

The current application was submitted with a Clause 4.6 variation request for non-compliance with Clause 4.4 Floor space ratio of the PLEP 2014, however Council's calculations found that the proposal complies with this Clause. The Applicant confirmed that the staircases in the principal dwelling and garage/secondary dwelling had been counted twice and as such, the revised FSR complies.

The Applicant was requested to provide a Clause 4.6 variation request to address the non-compliance with the minimum lot size for detached secondary dwellings under SEPP (Housing) 2021. In response to submissions received, the Applicant also submitted amended architectural plans removing the middle window on the northern wall and providing privacy screens, as well as raising the sill height of the windows on the western elevation. The location of the air-conditioning unit was also requested to be shown on the plans to assess potential amenity impacts.

Additionally, following referral to Council's Development Engineering team, the Applicant was requested to provide amended stormwater plans with on-site detention in accordance with Council's Water Management for Development Policy. Subsequently, the Applicant satisfactory plans proposing OSD.

The amended plans did not alter the environmental impact and therefore, the application was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan (CPP).

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.

<p>Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)</p>	<p>Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended Stormwater Plans and a Clause 4.6 Variation Request pursuant to Clause 53 (2a) of the State Environmental Planning Policy (Housing) 2021. Subsequently, the Applicant provided the requested information.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
<p>Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p>	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for the proposed development.</p>

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 17/05/2023 to 31/05/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Ms Anna Trebelas	66 Birkley Road MANLY NSW 2095
Mr Matthew Scott Bates	68 Birkley Road MANLY NSW 2095

The following issues were raised in the submissions:

- Visual Privacy
- Acoustic Privacy
- Airconditioning Unit
- Fence adjoining No.66 Birkley Road

The above issues are addressed as follows:

- **Visual Privacy**

The submissions raised concerns that the proposed secondary dwelling will result in overlooking into No.66 and No.68 Birkley Road. In particular, concerns were raised in relation to windows W24, W25 and W26.

Comment:

The openings of W24 - 26 have been reduced in size from the scheme originally notified. The

proposal incorporates external privacy screens on windows W24 with vertical battens on an angled frame. The slatted aperture view obtained from the openings will mitigate unreasonable overlooking impacts. Furthermore, windows W25 and W26 have been modified to provide a sill height of 1.7 metres and the height of the windows reduced to 0.7 metres. The proposed louvre window style will allow for sufficient sunlight and air flow to the occupants of the secondary dwelling whilst preserving a reasonable level of privacy to neighbours. A detailed assessment has been conducted under Section 3.4.2 of this report.

- **Acoustic Privacy**

A submission raised concerns in relation the noise transfer between properties due to the secondary dwelling's location close the boundary.

Comment:

There is an existing detached studio on the subject site located above the garage in close proximity to both boundaries due to the narrow allotment. The proposed secondary dwelling will increase the potential for noise from the current studio as the space will be permanently occupied. Given there will be northern and east facing operable windows facing the laneway and the adjoining garage roof of No.66 Birkley Road, which will provide adequate air flow, it is considered reasonable to condition the west-facing windows to to be fixed. It is noted that the existing west-facing window of the studio which is oriented towards the adjoining dwellings is a fixed window.

- **Air-conditioning Unit**

A submission raised concerns in relation to noise from the proposed air-conditioning unit. Additionally, the submitter claimed the BASIX Certificate is incorrect in stating that air-conditioning will be provided to both the living room and bedroom as the proposed secondary dwelling is a studio design.

Comment:

The air-conditioning unit for the proposed secondary dwelling will be located on the north-eastern corner of the upper floor closer to the Lawson Place laneway and adjoining the roof of the garage at No.66 Birkely Rd. This demonstrates appropriate setbacks from the habitable spaces of surrounding dwellings to ensure no unreasonable noise intrusion will occur. Low parapet walls are proposed on the eastern and western sides of the air-conditioning unit to further mitigate noise impacts, and provide a positive visual outcome when viewed from the streetscape and adjoining properties. A condition of consent has been imposed to ensure that the proposed air-conditioning unit shall not produce noise levels that exceed 5dBA when measured from the nearest property boundary in order to preserve neighbourhood amenity.

The BASIX Certificate document does not allow for the dual nomination of one space for the provision of air-conditioning. The Certificate has been assessed and confirmed as correct by a qualified building sustainability consultant.

- **Fence adjoining No.66 Birkley Road**

A submission raised concerns that the boundary fence between No.64 and No.66 Birkley Road should remain in situ until the secondary dwelling is complete and the new fence erected at the completion of construction works should be 1.8 metres measured from the ground level on the southern side.

Comment:

No works to the existing boundary fencing are approved under this development application, noting that owner's consent from No.66 Birkley Road has not been provided. Any disputes regarding works to boundary fencing are a civil matter that should be explored under the *Dividing Fences Act 1991*.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>Supported, subject to conditions</p> <p>The application has been investigated with respects to aspects relevant the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
NECC (Development Engineering)	<p>Supported, subject to conditions</p> <p>The proposal is for alterations and additions to the existing dwelling including construction of a garage and secondary dwelling. The site is in Region 3 and Stormwater Zone 1. As the proposed impervious area is greater than 60% of the site area, OSD is required in accordance with Council's Water Management for Development Policy.</p> <p>Additional Information Provided on 17/7/2023 The stormwater plans proposing OSD is satisfactory. No objections to approval subject to conditions as recommended.</p>
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p>Supported, subject to conditions</p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application for the principal dwelling (see Certificate No.A489643 dated 12 April 2023).

A BASIX certificate has also been submitted for the secondary dwelling (see Certificate No.1376747S dated 11 April 2023).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	50

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Housing) 2021

Part 1 – Secondary Dwellings

This Part applies to development for the purposes of a secondary dwelling on land in a residential zone if development for the purposes of a dwelling house is permissible on the land under another environmental planning instrument. As dwelling houses are permitted in the R1 General Residential zone pursuant to MLEP 2013 which applies to this site, Part 1 of the SEPP (Housing) 2021 is applicable.

Clause 52 – Development may be carried out with consent	
Standard	Compliance/Comment
(2) Development consent must not be granted for development to which this Part applies unless— a) No dwellings, other than the principal dwelling and the secondary dwelling, will be located on the land, and	Complies. The proposal will result in one (1) principal dwelling and one (1) secondary dwelling on the subject site.

Clause 53 – Non-discretionary development standards—the Act, s 4.15	
Standard	Compliance/Comment
a) For a detached secondary dwelling - a minimum site area of 450m ² .	Does not comply. The site area is less than 450m ² , therefore is inconsistent with this requirement. See discussion under Clause 4.6.
b) The number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out.	Complies. 2 car spaces will be retained.

Ausgrid

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

SEPP (Resilience and Hazards) 2021

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Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Manly Local Environmental Plan 2013

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	Dwelling: 6.9m Secondary Dwelling/Garage: 6.5m	-	Yes
Floor Space Ratio	FSR:0.6:1 (204.9m ²)	FSR: 0.55:1 (189.1m ²)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.12 Essential services	Yes
6.22 Development for the purposes of secondary dwellings in certain residential and environment protection zones	Yes

Detailed Assessment

4.6 Exceptions to development standards – SEPP(Housing)

Description of non-compliance:

Development standard:	Section 53 Non-discretionary development standards—the Act, s 4.15 of SEPP (Housing) 2021
Requirement:	Minimum site area for detached secondary dwelling - 450m ²
Proposed:	Site Area - 341.5m ²
Percentage variation to requirement:	24.11% (108.5m ²)

Assessment of request to vary a development standard:

The following assessment of the variation to Section 53 Non-discretionary development standards—the Act, s 4.15 of SEPP (Housing) 2021, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 4.6 Exceptions to development standards:

(1) *The objectives of this clause are as follows:*

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Comment:

Section 53 Non-discretionary development standards—the Act, s 4.15 of SEPP (Housing) 2021 is not expressly excluded from the operation of this clause.

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

(4) *Development consent must not be granted for development that contravenes a development standard unless:*

- (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
(b) the concurrence of the Secretary has been obtained.

Clause 4.6 (4)(a)(i) (Justification) assessment:

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

Comment:

The Applicant's written request has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act (cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*

- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The applicants written request argues, in part:

- *“The proposed development will promote housing diversity and affordability by adding to the mix of residential accommodation options, resulting in positive social and economic impacts for the surrounding locality.*
- *The proposed development maintains the general bulk and scale of surrounding dwellings.*
- *The development achieves compliance with the objectives of Council's landscaping, solar access and privacy controls under MDCP 2013.*
- *The proposed secondary dwelling replaces an existing detached studio at the rear of the site.”*

Council generally concurs with the applicant's justification in varying the development standard. The proposal is considered to be appropriate in the context of the site and locality and will not result in any unreasonable amenity impact to occupants of the site or adjacent properties. Given the proposal will replace an existing detached garage with upper level, the variation is acceptable as the built form will be largely unchanged and its use as a secondary dwelling is contextually appropriate. The proposal will be consistent with existing pattern and form of development along the Lawson Place laneway, which contains two (2) secondary dwellings and three (3) studios or loft storage approved above garages. Of the ten (10) properties with a dual frontage to Lawson Place, six (6) properties, inclusive of the existing studio and garage on the subject site, demonstrate a built form similar to the proposed development and the proposal is considered to be consistent with historical approvals and the built character of the area. Moreover, the proposed secondary dwelling is only 35.6m² in size.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

Clause 4.6 (4)(a)(ii) (Public Interest) assessment:

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development*

is proposed to be carried out

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Section 53 development standard and the objectives of the R1 General Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objective of the standard, of Section 53 Non-discretionary development standards of SEPP (Housing) 2021 is:

(1) The object of this section is to identify development standards for particular matters relating to development for the purposes of a secondary dwelling that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.

Comment:

As the above objective provides a general statement, it is assumed that in direct reference to the lot size provision and parking requirement for detached secondary dwellings, the objective is assumed to ensure that appropriate amenity is provided for occupants of a lot where a detached secondary dwelling is proposed.

The proposal will replace an existing detached garage with an approved storage loft level above. It is noted that from the site inspection undertaken to the property, the upper level is currently being used as a studio. The proposed secondary dwelling is suitably located on the site to ensure the maintenance of adequate private open space and landscaped areas, and demonstrates a compliant building height and floor space ratio to achieve a bulk and scale that is compatible with surrounding dwellings. Furthermore, the proposed secondary dwelling will be contextually appropriate in size for the undersized lot, exhibiting a gross floor area of only 35.6m². The articulated pavilion style of the development presenting to Lawson Place will complement surrounding development, noting that structures above garages are prevalent. Currently 6 of the 10 properties with boundaries on Lawson Place, contain development above the detached garages.

Approved Secondary Dwellings fronting Lawson Place

- No.68 Birkley Road was granted approval for a secondary dwelling under DA2019/0950 with a site area of 341.8m² and
- No.62 Birkley Road was granted approval for a secondary dwelling under DA2021/0411 with a site area of 341.5m².

Approved lofts/studios above garages above garages in Lawson Place

- No.74 Birkley Road, DA2004/243
- No.70 Birkley Road, BA0132/1994
- No.29 Quinton Road, DA2019/0416
- No.64 Birkely Road (subject site). BA0076/1997

The variation to the development standard is considered to have a positive social impact, providing affordable housing whilst maintaining the low density nature of the residential zone. As the numerical non-compliance relatively minor and maintains an existing non-compliance, it is considered the intent of the objective is achieved by the proposal and adequate amenity will be provided for occupants of

the principal dwelling and secondary dwelling.



Figure 1 – Approved Secondary dwelling (white building) to the south of the subject site (No.62 Birkley Road)



Figure 2 – Approved Secondary dwelling to the north of the subject site (No.68 Birkley Road) and general streetscape along Lawson Place

Secondary dwellings are permissible in the R1 General Residential zone under the MLEP 2013 and the MLEP does not provide a minimum lot size for such development. Clause 5.4(9) of the MLEP2013 requires that the total floor area of the secondary dwelling must not exceed 60m² or 30% of the total floor area of the principal dwelling. The proposed secondary dwelling's floor area of 35.6m² complies with both

requirements of this control.

Clause 6.22 of the MLEP 2013 is not relevant in this instance as the proposed secondary dwelling is not located within the existing principal dwelling. The proposal is consistent with the objective of this Clause given existing development comprising of upper levels above garages along Lawson Place. The proposal is compatible with the aesthetic values of the immediate locality and under these circumstances is the variation under the SEPP considered acceptable.

Zone objectives

The underlying objectives of the R1 General Residential zone:

- ***To provide for the housing needs of the community***

Comment:

The proposal will provide additional housing stock within the locality, providing for lower cost residential accommodation to meet the housing needs of the community.

It is considered that the development satisfies this objective.

- ***To provide for a variety of housing types and densities.***

Comment:

The proposed secondary dwelling will contribute to the varying housing types along Lawson Place, with secondary dwellings approved on surrounding sites.

It is considered that the development satisfies this objective.

- ***To enable other land uses that provide facilities or services to meet the day to day needs of residents.***

Comment:

The proposal will retain the residential use of the land.

It is considered that the development satisfies this objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R1 General Residential zone.

In addition, under the particular circumstances being, the total development is compliance with the FSR, the secondary dwelling will not exceed 36m², the site complies with landscaping provisions, the current form on site of a storage loft above current garage on site, and the context of similar surrounding development on the laneway, the extent of the request is considered acceptable.

Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation is assumed by the Local Planning Panel.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 341.5m ²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	N: 6.5m	Principal Dwelling: 4.7m (unaltered) Secondary Dwelling/Garage: 5.2m	-	Yes
	S: 6.5m	Principal Dwelling: 4.7m (unaltered) Secondary Dwelling/Garage: 4.6m	-	Yes
4.1.2.2 Number of Storeys	2	2 storeys	-	Yes
4.1.2.3 Roof Height	Height: 2.5m	Principal Dwelling: Unaltered Secondary Dwelling/Garage: 1m	-	Yes
	Pitch: maximum 35 degrees	Principal Dwelling: Unaltered Secondary Dwelling/Garage: 24 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Principal Dwelling: 3.6m (unaltered), consistent with prevailing setback	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	N: 1.7m (garage/secondary dwelling)	Ground Floor: Nil First Floor (secondary dwelling): 1m	Ground Floor: 100% (1.7m) First Floor: 70% (0.7m)	No
	S: 1.5m (garage/secondary dwelling)	Nil	100% (1.5m)	No
	Secondary street frontage: Prevailing setback	Secondary Dwelling: 1m, consistent with prevailing setback	-	Yes
4.1.4.4 Rear Setbacks*	8m	N/A	N/A	N/A

4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (187.83m ²)	37.28% (127.3m ²)	32.22% (60.53m ²)	No
	Open space above ground <25% of total open space (85.38m ²)	<25%	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (44.56m ²)	48.39% (61.6m ²)	-	Yes
4.1.5.3 Private Open Space	18sqm / 12sqm per dwelling	> 18m ²	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	4.8m / 68.5% of frontage	18.5%	No
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	Yes

*The subject site has two frontages, therefore there is no rear setback in this instance.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
Clause	Compliance with Requirements	Consistency Aims/Objectives
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes

4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

Description of non-compliance

Clause 3.4.2 of the DCP states that when building close to boundaries, windows must be off-set from those in the adjacent building to restrict direct viewing and to mitigate impacts on privacy. Two (2) submissions have been received from neighbouring properties to the north of the subject site, which raised concerns regarding privacy loss and overlooking from windows W24, W25 and W26 of the upper floor secondary dwelling above the garage. Given the narrow nature of the site within a low density residential setting, the proposed windows to the secondary dwelling have been assessed against the outcomes of this Clause.

It is noted that no submissions were raised in relation to the alterations and additions to the principal dwelling. Privacy to adjoining neighbours is considered to be enhanced as a result of the proposed works to the principal dwelling as two new opaque louvre windows are proposed along the northern elevation to replace existing windows, and a new privacy wall is proposed to the existing upstairs patio along this side.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

Objective 1) To minimise loss of privacy to adjacent and nearby development by:

- **appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and**
- **mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.**

Comment:

Clause 3.4.2 of the DCP refers to Amcord Design Element 5.5 for acceptable solutions in meeting the objectives of this plan. Element 5.5 of the AMCORD Design Principles relates to privacy and stipulates that the imposition of high sills is acceptable to protect overlooking of an adjacent habitable room window or area of private open space that is within 9 metres. Windows W25 and W26 have been raised to a sill height of 1.7 metres and the height of the windows themselves has been reduced to 700 millimetres. The Amcord Design Principles state that no screening is required to windows of habitable rooms provided they have a sill height of 1.7 metres or more above floor level. It is also noted that there is a large window along the existing upper level of the garage on the western elevation with a sill height of less than 1.7 metres, which results in a degree of overlooking into adjoining properties at present. Therefore, privacy to adjoining dwellings is considered to be

enhanced as a result of the proposed development. To ensure acoustic privacy is preserved, a condition of consent will be imposed requiring west-facing windows to be fixed.

Window W24 on the northern wall of the proposed secondary dwelling have been amended to reduce its size. The middle window has been removed to allow for the fixing for external privacy screens. Privacy screens to these windows are proposed mitigate any potential overlooking to the rear yards and habitable windows of dwellings to the north-west.

No windows are proposed along the southern elevation of the secondary dwelling and the Landscape Plan accompanying the application proposes screen planting along the southern boundary to minimise overlooking.

The proposed windows along the eastern elevation fronting Lawson Place will replace existing windows. Lawson Place provides sufficient spatial separation between the subject site and adjoining dwellings to the east to mitigate privacy impacts, noting that the site faces a privacy screen and solid wall of No.29 Quinton Road.

Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.

Comment:

The proposed privacy measures such as high sills and privacy screens incorporated in the window design will not result in any detrimental overlooking impacts to or from habitable rooms and private open space, whilst improving access to light and air for the occupants of the dwelling.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

Highlight windows are proposed along the secondary dwelling's western elevation fronting Lawson Place, allowing for casual surveillance. As such, the proposed development will not compromise neighbourhood security or casual surveillance of the street frontage.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.4 Setbacks (front, side and rear) and Building Separation

Description of non-compliance

Clause 4.1.4.2 of the DCP stipulates that setbacks between any part of a building and the side boundary must not be less than one third of the height of the adjacent external wall of the proposed building. The proposed garage presents a nil setback to the north and south side boundaries, whilst the upper level secondary dwelling presents a nil setback to the southern side, and a setback of 1 metre to the northern side. As such, the setbacks of the proposed garage and secondary dwelling are numerically non-compliant with the requirements of the DCP. Notably, the existing garage and loft are non-compliant with the side setback control along both the northern and southern side boundaries.

The control also states that for setbacks to secondary street frontages, the side boundary setback control will apply unless a prevailing building line exists. The proposed 1 metre setback to Lawson

Place is consistent with the setback of the existing two storey garage and studio on the site, and is compatible with the setbacks of adjoining developments fronting Lawson Place. Therefore the prevailing building line will be maintained.

No changes are proposed to the side or front setbacks of the principal dwelling under this Development Application.

Merit consideration:

With regard to the consideration for a variation for the side setbacks, the development is considered against the underlying Objectives of the Control as follows:

Objective 1) To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.

Comment:

The proposed garage and secondary dwelling front Lawson Place, which has an enclosed streetscape comprised of built form elements close to the front boundary. The proposed development is generally consistent with the existing structures on the site, as well as the character of other developments in the immediate vicinity, noting that two storey secondary dwelling and parking facilities with a reduced and nil setback to Lawson Place were observed during the site visit to the property. Furthermore, the proposed development is compliant with the development standard for building height and will not appear visually dominant within the streetscape.

Objective 2) To ensure and enhance local amenity by:

- ***providing privacy;***
- ***providing equitable access to light, sunshine and air movement; and***
- ***facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.***
- ***defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and***
- ***facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.***

Comment:

The proposal is not anticipated to result in any adverse amenity impacts to adjoining properties in regards to solar access, view sharing, or privacy. Given that the proposed garage and secondary dwelling will replace an existing garage and studio, equitable access to light, sunshine and air movement will be maintained in a manner that is similar to the existing arrangement. Privacy concerns raised by neighbours have been considered and addressed under Section 3.4.2 of this report.

Objective 3) To promote flexibility in the siting of buildings.

Comment:

The proposed side setbacks of the garage and secondary dwelling are not dissimilar to those of the existing garage and loft. Notwithstanding the numerical non-compliance to the control, the reduced setbacks conform to the spatial proportions and rhythm of the buildings within narrow lots along the Lawson Place streetscape.

Objective 4) To enhance and maintain natural features by:

- ***accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;***
- ***ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and***
- ***ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.***

Comment:

The proposal will involve the removal of an existing paved pergola area in front of the garage and studio, which will enhance vegetation on the site and accommodate opportunities for planting. The nature of the development does not unduly detract from the context of the site, and the site does not adjoin open space lands, national parks, or urban bushland.

Objective 5) To assist in appropriate bush fire asset protection zones.

Comment:

The site is not located on bush fire prone land, therefore this objective is not relevant for this application.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.5 Open Space and Landscaping

Description of non-compliance

The subject site is located in Area OS3 under the Residential Open Space Areas in Schedule 1 of the DCP. As such, at least 55% of the site area (187.83m²) is required to be open space. The proposal results in a total open space area of 37.28% (127.3m²) of the site, which results in a variation of 32.22% (60.53m²) to the control. It is noted that as the control requires total open space to exhibit a horizontal dimension of at least 3 metres in any direction, there are areas on the site which serve as open space and would reduce the proposed non-compliance, however these areas have been omitted from the calculation. Furthermore, due to this requirement, the total open space on the site will be unchanged as a result of the proposed development.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.

Comment:

The construction of a garage and secondary dwelling will be located largely within the building footprint of the existing detached two storey structure. The alterations and additions to the principal dwelling are

relatively minor and will not impact existing open space or landscaped area provisions. As such, the proposal will not augment landscaping on the site, and will preserve the existing landscape features and native flora.

Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.

Comment:

The existing open space on the subject site is deficient of the minimum 55% requirement, and the proposal largely retains these open space areas, as discussed above. The removal of paving in the rear yard will increase the landscaped area on the site to achieve full compliance with the 35% minimum requirement of this Clause. Moreover, existing vegetation will be maintained to maximise soft landscaping.

Objective 3) To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.

Comment:

The proposal will not result in any adverse amenity impacts to adjoining or surrounding properties. Sufficient landscaping within the primary frontage of the site has been provided to maintain an attractive streetscape.

Objective 4) To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.

Comment:

Given that the site exhibits a compliant area of landscaped open space as a result of the proposal, sufficient porous areas and surfaces have been provided to minimise stormwater runoff. The application has been reviewed by Council's Development Engineer in relation to stormwater and a suitable stormwater management solution for the site has been proposed and is supported, subject to conditions.

Objective 5) To minimise the spread of weeds and the degradation of private and public open space.

Comment:

The proposal will not result in the degradation of private or public space. Moreover, the retention of existing vegetation and planting on the site with suitable species will prevent the spread of weeds.

Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.

Comment:

The increase in landscaped open space on the site increases habitat for wildlife and maximises the potential for wildlife corridors.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

Description of non-compliance

Clause 4.1.6.1 requires that the maximum width of any garage, carport or hardstand area is not to exceed a width equal to 50 percent of the frontage, up to a maximum width of 6.2 metres. The opening of the proposed garage measures 4.8 metres, or 68.5% of the secondary frontage, presenting a variation to the control of 18.5%. Notably, the existing double garage on the site to be demolished under this Development Application is numerically non-compliant with the control and exhibits a garage opening of 4.6 metres.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

Objective 1) To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).

Comment:

The size and width of the proposed garage is considered appropriate in this instance, given that the proposal will replace an existing garage on the site. Accessible and adequate parking will be provided for residents of the dwelling house and secondary dwelling consistent with the requirements of the DCP, which requires that two (2) off-street car spaces be provided.

Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.

Comment:

As above, the proposal will provide two (2) off-street car spaces to meet the DCP requirements for onsite parking and reduce the demand for on-street parking along Lawson Place. It is noted that under Clause 53 of the SEPP (Housing) 2021, the number of parking spaces provided on the site must be the same as the number of parking spaces provided immediately before the development of a secondary dwelling. In order to comply with this Clause, the number of parking spaces would need to be reduced which would contravene the requirements of the MDCP 2013 and the SEPP (Housing) 2021. Therefore, the variation to the control is warranted to provide for sufficient on-site parking.

Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.

Comment:

The location and design of the garage is considered to be efficient, safe and convenient and is comparable to other parking facilities along Lawson Place that are numerically non-compliant with this control due to the reduced width of the allotments. As similar structures are observed along the streetscape, the proposal is not anticipated to result in an adverse visual outcome.

Objective 4) To ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.

Comment:

The proposal will not require any excavation works as the garage will be built largely over the existing concrete slab. As such, the proposed works are unlikely to cause site instability or interruption to ground water flows.

Objective 5) To ensure the width and number of footpath crossings is minimised.

Comment:

No changes are proposed to existing footpath crossings under this Development Application.

Objective 6) To integrate access, parking and landscaping; to limit the amount of impervious surfaces and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment.

Comment:

The proposed garage will be positioned in the same location as the existing garage which limits the amount of impervious surfaces. Access to the garage is through a door to the side of the garage opening, and this will provide suitable and safe access that is integrated into the built form.

Objective 7) To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and promote clean air.

Comment:

The site is located close to public transport in the Manly City Centre which will reduce the demand for onsite parking requirements.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$5,626 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$562,624.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;

- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

PLANNING CONCLUSION

This proposal, for Demolition works and Construction of a garage and secondary dwelling, and alterations and additions to the existing dwelling, has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to the application proposing a variation to Section 53 Non-discretionary development standards—the Act, s 4.15 of SEPP (Housing) 2021. Specifically, the application proposes a variation to the minimum site area for detached secondary dwellings of more than 10% (24.1% or 108.5m²). The applicant's 4.6 request is considered appropriate under the specific circumstances being, the total development is compliance with the FSR, the secondary dwelling will not exceed 36m², the site complies with landscaping provisions, the current form on site of a storage loft above current garage on site, and the context of similar surrounding development on the laneway, and if approved this should be stated in the Reasons for Determination.

Two (2) submissions were received during the notification period.

When assessed against the MLEP 2013 and MDCP 2013 objectives, the proposed development is considered to align with the relevant aims and requirements of these policies, noting that the proposal will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.

It is considered that the proposed development is satisfactory in the circumstances and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2023/0472 for Demolition works and Construction of a garage and secondary dwelling, and alterations and additions to the existing dwelling on land at Lot 1 DP 105207, 64 Birkley Road, MANLY, subject to the conditions printed below:

Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

The development must be carried out in compliance with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Site Plan - Sheet No.02 Revision A	Jan 2023	Paul Carrick Associates
House Floor Plans - Sheet No.03 Revision A	Jan 2023	Paul Carrick Associates
Roof Plan - Sheet No.04 Revision A	Jan 2023	Paul Carrick Associates
Principal Dwelling Elevations (West and East) and Long Section - Sheet No.05 Revision A	Jan 2023	Paul Carrick Associates
Principal Dwelling Elevations (North and South) - Sheet No.06 Revision A	Jan 2023	Paul Carrick Associates
Principal Dwelling Sections (East and West) - Sheet No.07 Revision A	Jan 2023	Paul Carrick Associates
Secondary Dwelling and Garage Floor Plans - Sheet No.21 Revision C	July 2023	Paul Carrick Associates
Secondary Dwelling and Garage Elevations (East and West) - Sheet No.22 Revision C	July 2023	Paul Carrick Associates
Secondary Dwelling Elevations (South and North) and Sections - Sheet No.23 Revision C	July 2023	Paul Carrick Associates
Driveway - Sheet No.24 Revision A	Jan 2023	Paul Carrick Associates

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Principal Dwelling - BASIX Certificate No.A489643	12 April 2023	Building Sustainability Assessments
Secondary Dwelling - BASIX Certificate No.1376747S	11 April 2023	Building Sustainability Assessments

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

c) The development is to be undertaken generally in accordance with the following:

Landscape Plans		
Drawing No.	Dated	Prepared By
Landscape Plan - Sheet No.11 Revision A	Jan 2023	Paul Carrick Associates

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	Undated	Vaughan Milligan Development Consulting

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

2. Compliance with Other Department, Authority or Service Requirements

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response - OH and UG Cables	15 May 2023

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

3. Prescribed Conditions

(a) All building works must be carried out in accordance with the requirements of the

Building Code of Australia (BCA).

- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifier for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

4. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths,

roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

- (k) Prior to the commencement of any development onsite for:
- i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished
- The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

 - (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
 - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
 - (4) Swimming pools and spas must be registered with the Division of Local

Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$5,626.24 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$562,624.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

6. Security Bond

A bond (determined from cost of works) of \$5,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifier prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.northernbeaches.nsw.gov.au).

Reason: To ensure adequate protection of Council's infrastructure.

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE**7. Amendments to the approved plans**

The following amendments are to be made to the approved plans:

- The west-facing windows (W25 and W26) on the proposed secondary dwelling are to be fixed s

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure development minimizes unreasonable impacts upon surrounding land.

8. Room Heights

The heights of rooms and other spaces must comply with Clause 10.3.1 of the National Construction Code - Housing Provisions "Room Heights".

Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for building occupant health and amenity.

9. Laundry Facilities

The new building that is proposed to be constructed as a secondary dwelling is required to be provided with Laundry facilities which comply with Clause 10.4.1 of the National Construction Code - Housing Provisions – 'Required Facilities'. A kitchen sink or washbasin must not be counted as a laundry washtub. Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for building occupant health and amenity

10. On-Site Stormwater Detention Details

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Taylor Consulting, drawing number Storm 1, dated 14/7/2023. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal and stormwater management arising from development.

11. Vehicle Crossings Application

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing in Lawson Place 6.0 meters wide in accordance with Northern Beaches Council Standard Drawing Normal in accordance with Section 138 of the Roads Act 1993. Existing dish drain to be reconstructed at the edge of bitumen

Note, driveways are to be in plain concrete only.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

A Council approval is to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

12. **Stormwater Drainage Disposal**

The stormwater drainage systems for the development are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.

All stormwater drainage systems must comply with the requirements of Council's Water Management for Development Policy. Any recommendations identified within a Geotechnical Report relevant to the development are to be incorporated into the design of the stormwater drainage system. Details demonstrating compliance from a qualified and practising Civil Engineer and where relevant a Geotechnical Engineer must be submitted to and approved by the Certifier prior to the issue of a Construction Certificate.

When the proposed discharge point for the development in this consent cannot strictly comply with the Water Management for Development Policy, the Applicant must apply to verify the proposed discharge point by gaining Council approval via a Stormwater Drainage Application. Council approval must be provided to the Certifier prior to the issue of a Construction Certificate when a Stormwater Drainage Application is required. The Stormwater Drainage Application form can be found on Council's website.

Compliance with this condition must not result in variations to the approved development or additional tree removal.

Reason: To ensure satisfactory management of stormwater.

13. **Boundary Identification Survey**

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of any Construction Certificate.

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

14. **Fire protection of garage top dwellings**

Where parts of a Class 1a dwelling are located above a Class 10a private garage that is not associated with the Class 1a dwelling, fire separation works is required to comply with Clauses

9.4.1 and 9.4.2 of the National Construction Code - Housing Provisions 'Fire protection of garage top dwellings'. Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for fire safety and for building occupant safety.

15. Fire Separation of External Walls

The external walls of the proposed Class 1a (habitable building) where less than 900mm from an allotment boundary and any openings within these walls is required to comply with Clause 9.2.1 of the National Construction Code – Housing Provisions 'External walls of a Class 1 building'. Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for fire safety and for building occupant safety.

16. Waste Management Plan

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

Details demonstrating compliance must be provided to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

17. Compliance with standards (Demolition):

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to Council prior to the commencement of demolition works.

Reason: To ensure the development is constructed in accordance with appropriate standards.

18. Compliance with Standards

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards.

19. External Finishes to Roof

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

20. **Sydney Water "Tap In"**

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifier demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website www.sydneywater.com.au for:

- "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

Reason: To ensure compliance with the statutory requirements of Sydney Water.

DURING BUILDING WORK

21. **Road Reserve**

The applicant shall ensure the public footways and roadways adjacent to the site are maintained in a safe condition at all times during the course of the work.

Reason: Public safety.

22. **Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998)];
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

23. **Demolition Works - Asbestos**

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be

disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifier, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

24. Survey Certificate

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier when the external structure of the building is complete.

Reason: To demonstrate the proposal complies with the approved plans.

25. Waste Management During Development

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

Details demonstrating compliance must be submitted to the Principal Certifier.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

26. Stormwater Drainage Disposal Certification

Certification from an appropriately qualified and practising Civil Engineer demonstrating the stormwater drainage systems have been designed and installed in accordance with the requirements of Council's Water Management for Development Policy and where relevant a Geotechnical Engineer shall be provided to the Principal Certifier prior to the issue of an Occupation Certificate, and;

If any on site stormwater detention system is installed the Applicant shall lodge the Legal Documents Authorisation Application with Council.

The application is to include the completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification. A guide to the process and associated Legal Document Authorisation Application form can be found on Council's website. The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system within this development consent.

The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the authority to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user

for the on-site stormwater detention system is to be submitted.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure satisfactory management of stormwater.

27. Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures

The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification.

The Applicant shall create on the Title a restriction on the use of land and a positive covenant in respect to the ongoing maintenance and restriction of the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

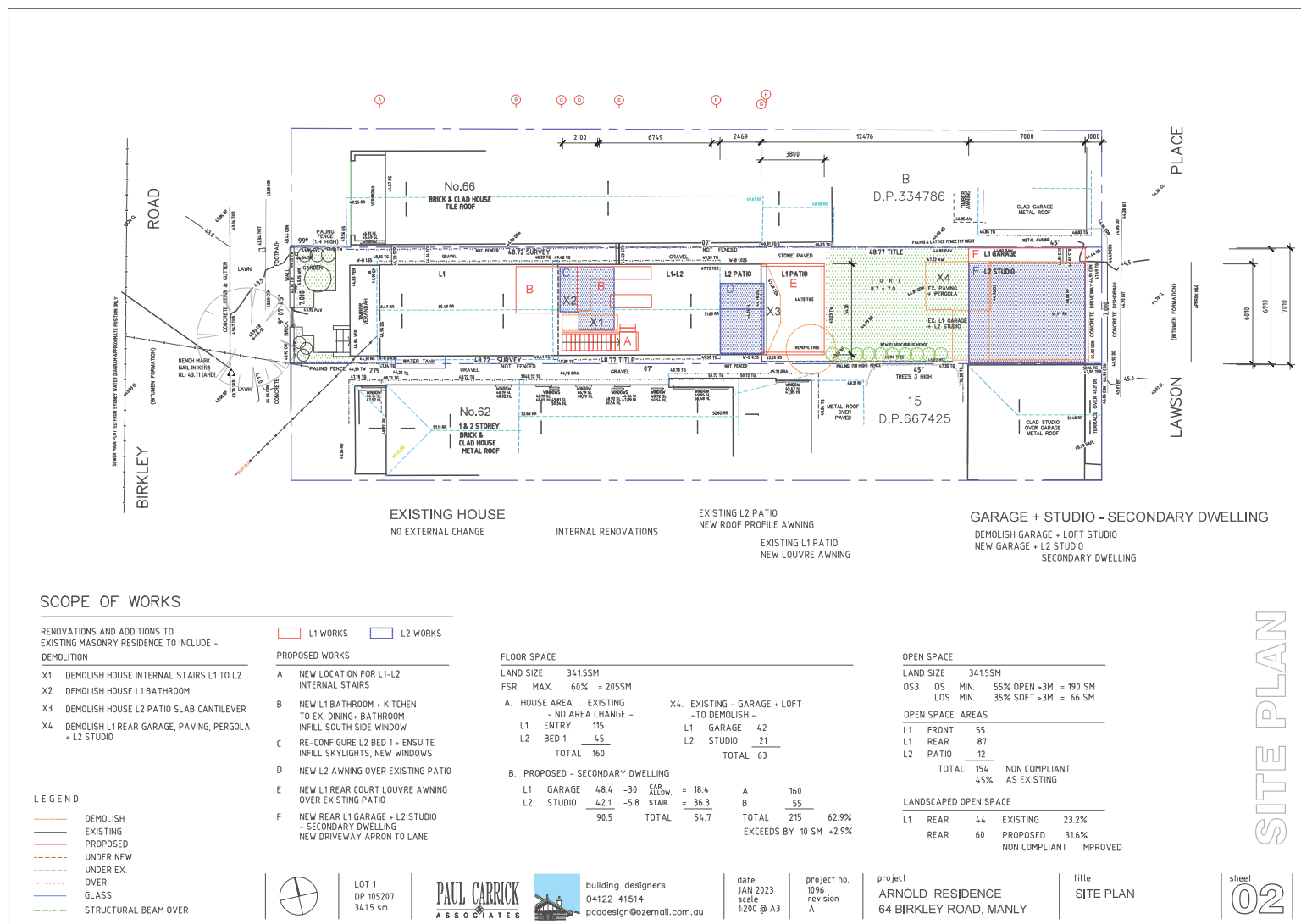
Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

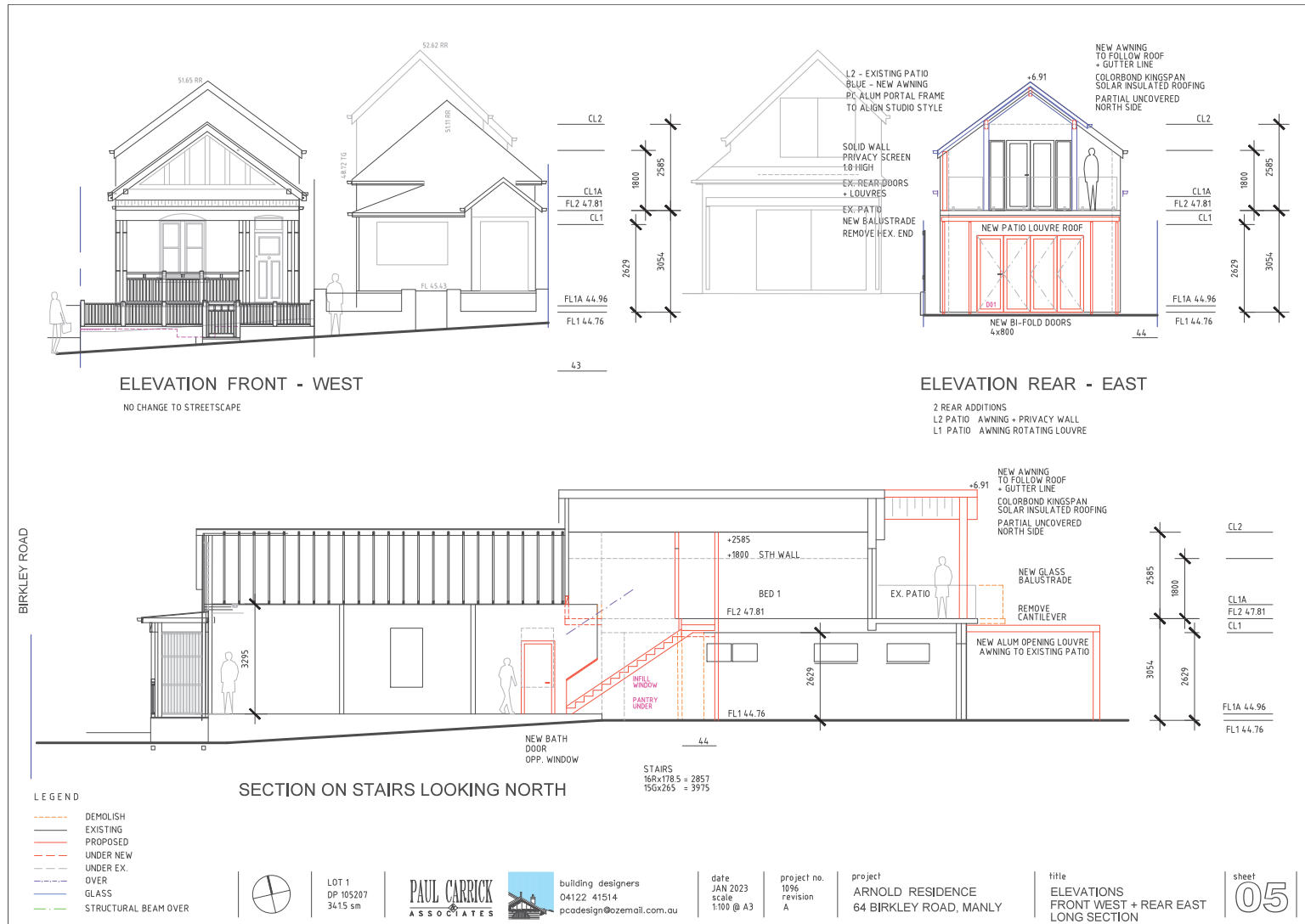
ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

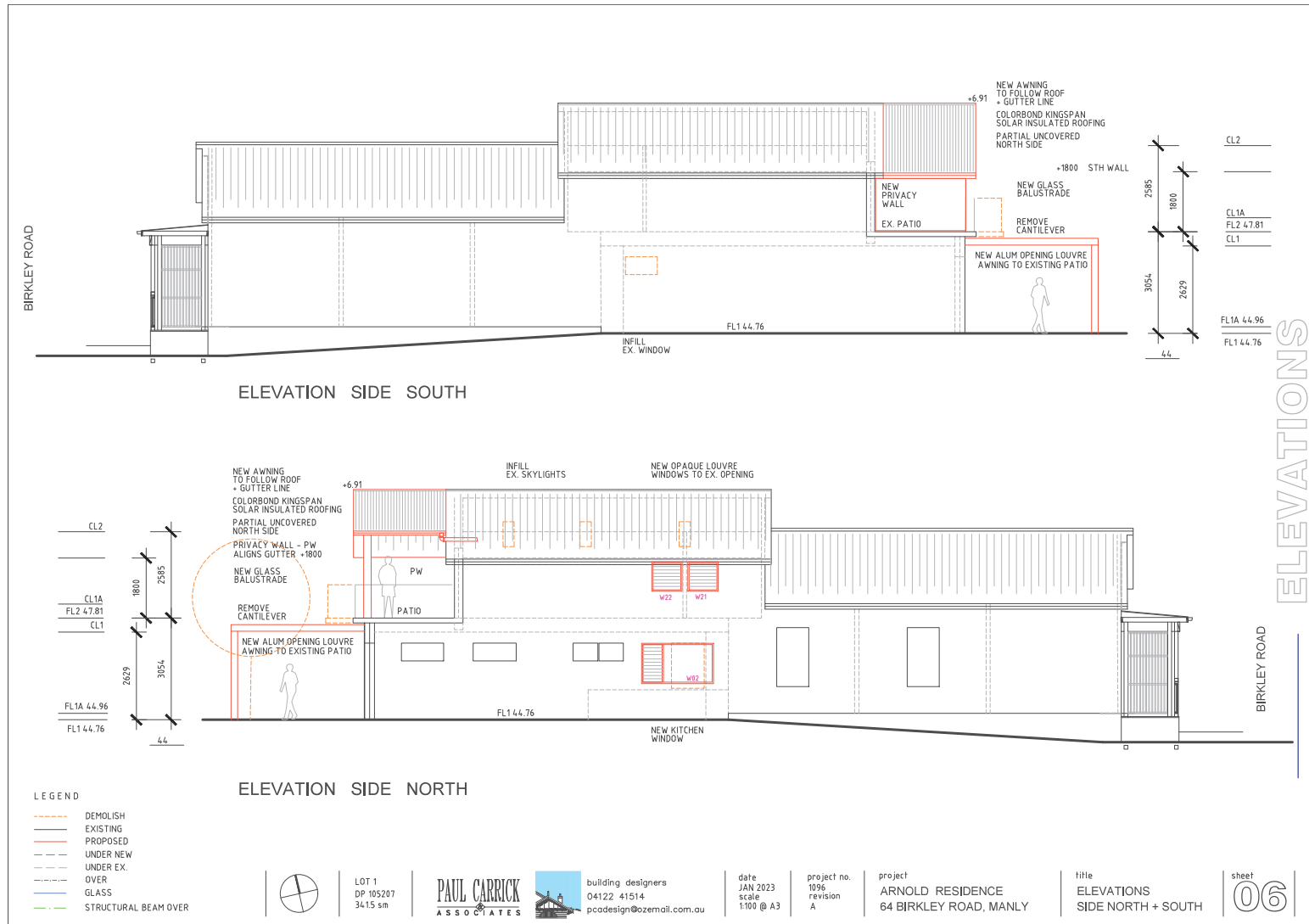
28. Air-conditioning Unit Noise

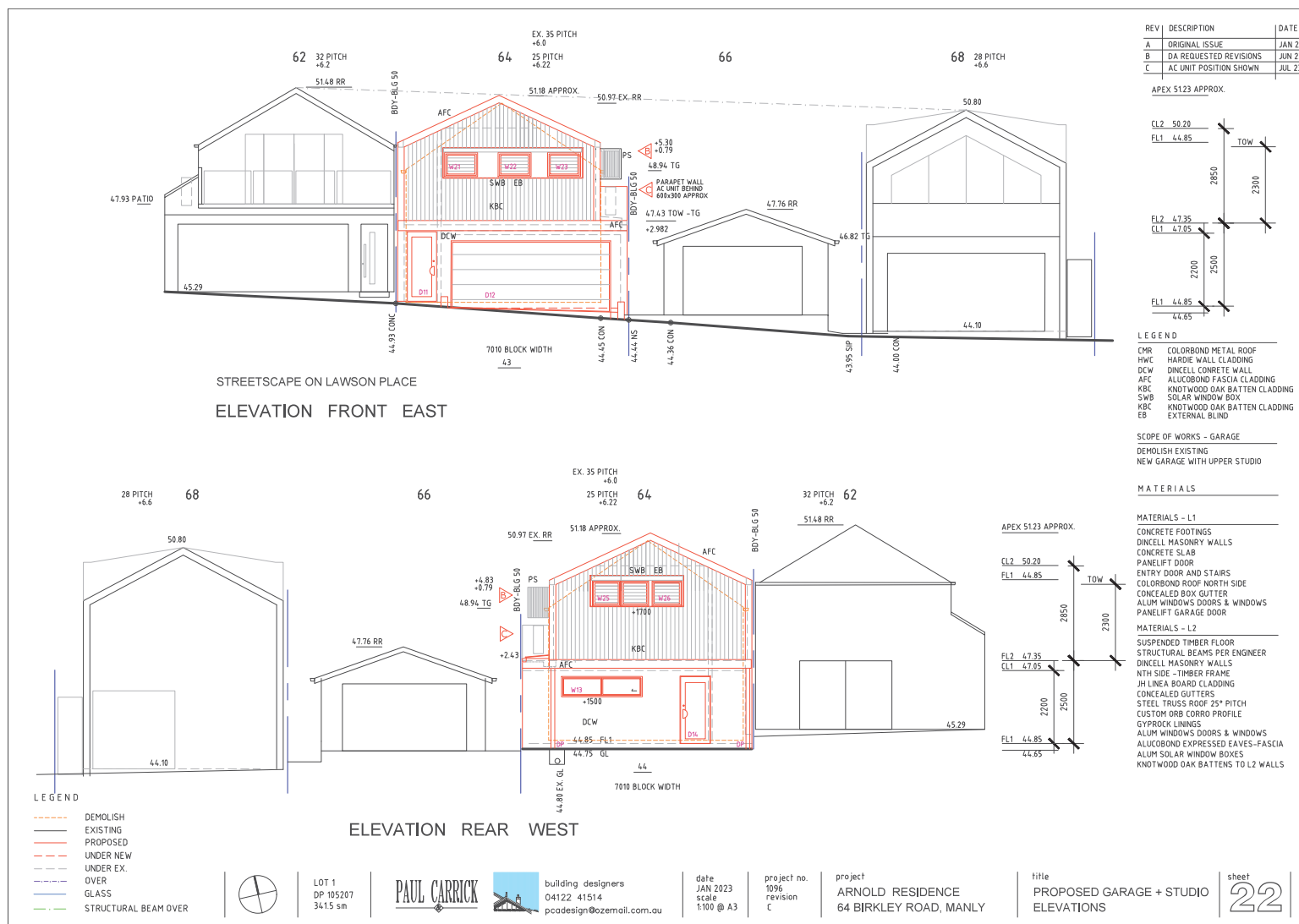
The proposed air conditioning unit shall not produce noise levels that exceed 5dBA when measured from the nearest property boundary.

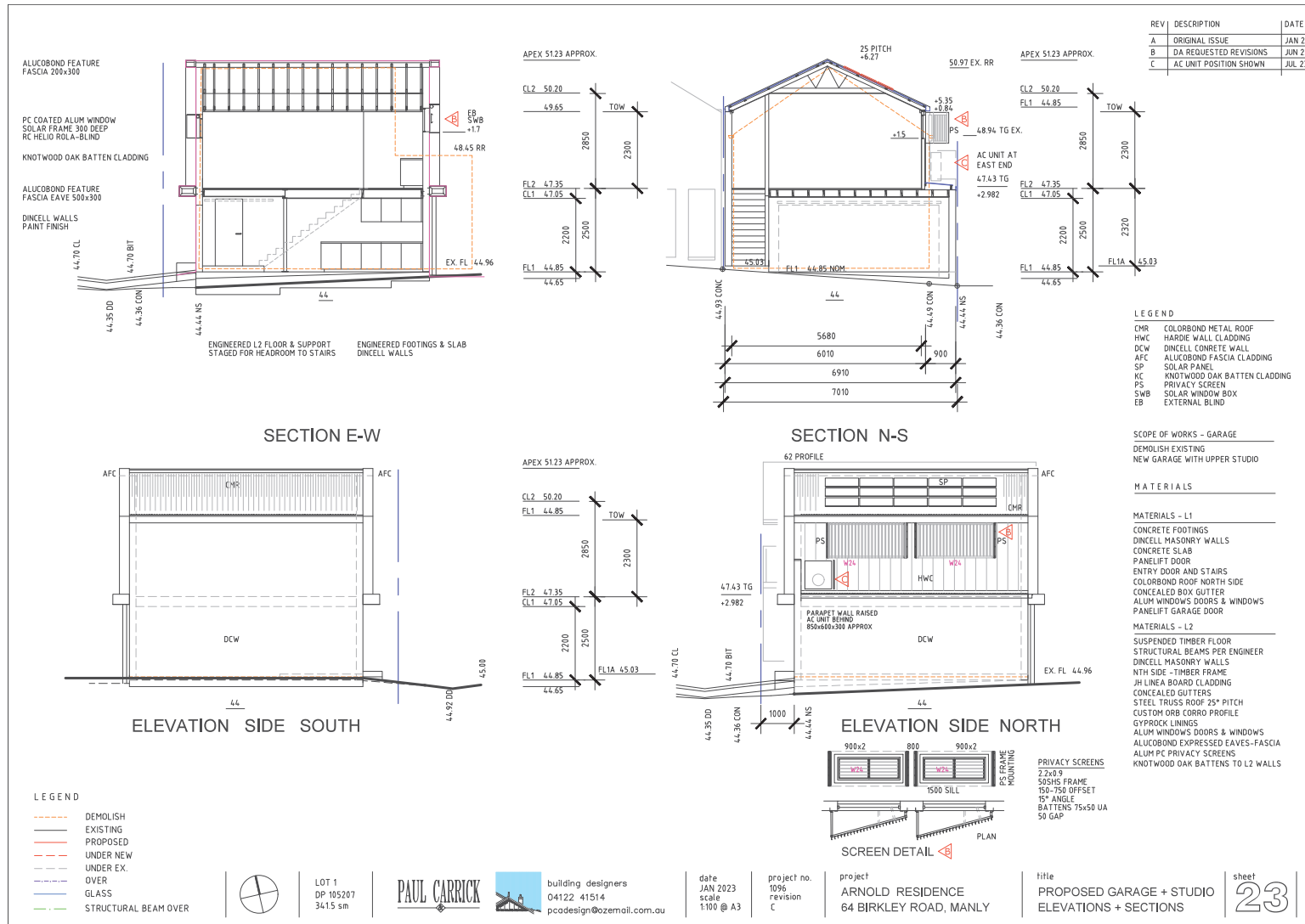
Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.











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CLAUSE 4.6 – MINIMUM SITE AREA

(CLAUSE 53(2)(a) – STATE ENVIRONMENTAL PLANNING POLICY (HOUSING) 2021

(Prepared July 2023)

Vaughan Milligan Development Consulting Pty Ltd

WRITTEN REQUEST PURSUANT TO CLAUSE 4.6 OF MANLY LOCAL ENVIRONMENTAL PLAN 2013

64 BIRKLEY ROAD, MANLY

**VARIATION OF A NON-DISCRETIONARY DEVELOPMENT STANDARD REGARDING THE MINIMUM
SITE AREA REQUIREMENT FOR A DETACHED SECONDARY DWELLING AS DETAILED IN CLAUSE
53(2)(a) OF THE STATE ENVIRONMENTAL PLANNING POLICY (HOUSING) 2021**

**FOR PROPOSED ALTERATIONS AND ADDITIONS TO THE EXISTING DWELLING AND THE
CONSTRUCTION OF A NEW GARAGE AND SECONDARY DWELLING**

For: For proposed alterations and additions to the existing dwelling and the construction of
a new garage and secondary dwelling
At: 64 Birkley Road, Manly
Owner: Jennifer & James Arnold
Applicant: Jennifer & James Arnold
C/- Vaughan Milligan Development Consulting Pty Ltd

1.0 Introduction

This written request under clause 4.6 of Manly Local Environmental Plan 2013 (**MLEP 2013**) to accompany a Development Application seeking consent for additions and alterations to an existing dwelling and the construction of a new garage and secondary dwelling at 64 Birkley Road, Manly.

The written request is made pursuant to Clause 4.6 MLEP 2013 and requests a variation to the non-discretionary development standard relating to the minimum site area for the construction of a detached secondary dwelling, as detailed under Clause 53(2)(a) of State Environmental Planning Policy (Housing) 2021 (the Housing SEPP).

Clause 53 (2)(a) of the Housing SEPP prescribes a minimum site area of 450m² for development for the purpose of a detached secondary dwelling, and notes:

53 Non-discretionary development standards—the Act, s 4.15

- (1) The object of this section is to identify development standards for particular matters relating to development for the purposes of a secondary dwelling that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.*
- (2) The following are non-discretionary development standards in relation to the carrying out of development to which this Part applies—**
 - (a) for a detached secondary dwelling—a minimum site area of 450m²,**
 - (b) the number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out.*

64 Birkley Road, Manly

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The subject site has an area of 341.5m² by survey, as noted within the Survey Plan prepared by C.M.S Surveyors Pty Limited, Reference No 21375, dated 20 May 2022, provided with the Development Application submission.

In this regard, it is requested Council support a variation with respect to compliance with the minimum site area as described in clause 53(2)(a) of the Housing SEPP.

2.0 Background

Clause 53(2)(a) of the Housing SEPP prescribes a minimum site area of 450m² for development for the purpose of a detached secondary dwelling, and notes:

53 Non-discretionary development standards—the Act, s 4.15

- (1) *The object of this section is to identify development standards for particular matters relating to development for the purposes of a secondary dwelling that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.*
- (2) *The following are non-discretionary development standards in relation to the carrying out of development to which this Part applies—*
 - (a) *for a detached secondary dwelling—a minimum site area of 450m²,*
 - (b) *the number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out.*

The works which are the subject of this application propose the construction of a new detached secondary dwelling and with the site having an area of 341.5m², the site area does not comply with the non-discretionary development standard of 450m².

The existing site area will present a variation to the non-discretionary development standard of 108.5m² or 24.1%.

Is clause 53(2)(a) of the Housing SEPP a development standard?

The definition of “development standard” in clause 1.4 of the EP&A Act means standards fixed in respect of an aspect of a development and includes:

- (c) *the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*

Clause 53(2)(a) relates to the minimum site area for the carrying out of development for the purposes of a detached secondary dwelling of 450m² and therefore Clause 53(2)(a) is a development standard.

The proposal is considered acceptable and as discussed further within this request, there are sufficient environmental planning grounds to justify contravening the development standard.

The controls of Clause 53(2)(a) of the Housing SEPP are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

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3.0 Purpose of Clause 4.6

MLEP 2013 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the LEP should be assessed. These cases are taken into consideration in this request for variation.

In particular, the principles identified by Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council* [2018] NSWLEC 118 have been considered in this request for a variation to the development standard.

4.0 Objectives of Clause 4.6

Clause 4.6(1) of MLEP 2013 provides:

(1) *The objectives of this clause are as follows:*

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“Initial Action”) provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant’s written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”. If objective (b) was the source of the Commissioner’s test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.”

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

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Clause 4.6(2) of the LEP provides:

- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Clause 53(2)(a) of the Housing SEPP and the relevant non-discretionary development standard in relation to the minimum site area for development for the purposes of a detached secondary dwelling is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of the LEP.

Clause 4.6(3) of MLEP 2013 provides:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

The proposed development does not comply with the minimum site area for the carrying out of development for a detached secondary dwelling, pursuant to Clause 53(2)(a) of the Housing SEPP which prescribes a non-discretionary development standard of a minimum site area of 450m².

Clause 4.6(4) of MLEP 2013 provides:

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) the consent authority is satisfied that:*
- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Planning Secretary has been obtained.*

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]). The second positive opinion of

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satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest *because* it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Planning Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 55 of the *Environmental Planning and Assessment Regulation 2021*, the Secretary has given written notice dated 5 May 2020, attached to the Planning Circular PS 20-002 issued on 5 May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of MLEP 2013 provides:

- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

Council has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), and should consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude Clause 53(2)(a) of the Housing SEPP from the operation of clause 4.6.

The specific objectives of Clause 4.6 are as follows:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

The development will achieve a better outcome in this instance as the site will provide for additions and alterations to the existing dwelling, together with the construction of a new detached secondary dwelling and garage, which is consistent with the stated Objectives of the R1 General Residential Zone, which are noted as:

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- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

5.0 The Nature and Extent of the Variation

- 5.1 This request seeks a variation to the non-discretionary development standard requiring a minimum site area of 450m² for the purposes of a detached secondary dwelling as detailed within Clause 53(2)(a) of the Housing SEPP.
- 5.2 Clause 53(2)(a) of the Housing SEPP specifies a minimum site area of 450m² for carrying out development for the purposes of a secondary dwelling.
- 5.3 The works which are the subject of this application propose the construction of a new detached secondary dwelling and with the site having an area of 341.5m², the site area does not comply with the non-discretionary development standard of 450m².

The existing site area will present a variation to the non-discretionary development standard of 108.5m² or 24.1%.

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6.0 Relevant Caselaw

In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827* continue to apply as follows:

The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].

A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].

A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].

A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].

A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.

These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

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The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 53(2)(a) of the Housing SEPP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
1. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 53(2)(a) of the Housing SEPP and the objectives for development in the R1 General Residential Zone?
2. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
3. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes the non-discretionary development standards within clause 53(2)(a) of the Housing SEPP?

7.0. Request for Variation

7.1 Is clause 53(2)(a) of the Housing SEPP a development standard?

The definition of “development standard” in clause 1.4 of the EP&A Act includes:

(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,

Clause 53(2)(a) relates to the minimum site area for the carrying out of development for the purposes of a detached secondary dwelling of 450 m² and therefore Clause 53(2)(a) is a development standard.

The proposal is considered acceptable and as discussed further within this request, there are sufficient environmental planning grounds to justify contravening the development standard.

The controls of Clause 53(2)(a) of the Housing SEPP are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

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7.2 Is compliance with clause 53(2)(a) unreasonable or unnecessary?

This request relies upon the 1st way identified by Preston CJ in *Wehbe*.

The first way in *Wehbe* is to establish that the objectives of the standard are achieved.

The object of the non-discretionary development standard within Clause 53 of the Housing SEPP is detailed in Clause 53(1) which notes:

53 Non-discretionary development standards—the Act, s 4.15

- (1) *The object of this section is to identify development standards for particular matters relating to development for the purposes of a secondary dwelling that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.*

Clause 53(2)(a) notes a minimum site area of 450m² for the carrying out of development for the purposes of detached secondary dwelling.

For the reasons outlined within this written request, the proposal will achieve the objectives of the R1 General Residential zone and accordingly, we are of the view that the proposal is consistent with the objectives of the development standard.

7.3 Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*

In the circumstances of this matter, there are sufficient environmental planning grounds to justify

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contravening the development standard.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposed development will promote housing diversity and affordability by adding to the mix of residential accommodation options, resulting in positive social and economic impacts for the surrounding locality (cl1.3(b)).
- The proposed development maintains the general bulk and scale of surrounding contemporary dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly and economic use of the land (cl 1.3(c)).

In this regard, for the following reasons the proposal is considered to present an appropriate bulk and scale and add positively to the immediate vicinity:

- The development complies with the FSR and height controls under the MLEP 2013
- The development achieves compliance with the objectives of Council's landscaping, solar access and privacy controls under the LDCP 2013.
- The articulated pavilion style development has been prepared with consideration to minimise visual privacy in overshadowing impacts to the adjoining properties.
- The development will present a compatible height and articulated form to Lawson Lane which complements the existing surrounding detached development.
- The proposed secondary dwelling replaces an existing detached secondary dwelling at the rear of the site.
- Similarly, the proposed development will provide for a high level of amenity within a built form which is compatible with the character of the locality, which also promotes the orderly and economic use of the land (cl 1.3(c)).
- The proposed development is considered to promote good design and enhances the residential amenity of the buildings' occupants and the immediate area (cl 1.3(g)).
- Consistent with the findings of Commissioner Walsh in *Eather v Randwick City Council* [2021] NSW LEC 1075 and Commissioner Grey in *Petrovic v Randwick City Council* [2021] NSW LEC 1242, the departure from the actual numerical standard and absence of impacts consequential of the departure constitute environmental planning grounds, as it promotes the good design and amenity of the development in accordance with the objects of the EP&A Act.

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of additions and alterations to the existing dwelling and the inclusion of a detached secondary dwelling that provides sufficient floor area for future occupants and manages the bulk and scale of the development. These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the minimum site area standard.

It is noted that in *Initial Action*, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

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87. *The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.*

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

7.4 Is the proposed development in the public interest because it is consistent with the objectives of clause 53(2)(a) of the Housing SEPP 4.3 and the objectives of the R1 General Residential Zone of MLEP 2013?

Section 7.2 of this written request suggests the first test in Wehbe is made good by the development.

Each of the objectives of the R1 General Residential Zone and the reasons why the proposed development is consistent with each objective is set out below.

I have had regard for the principles established by Preston CJ in *Nessdee Pty Limited v Orange City Council* [2017] NSWLEC 158 where it was found at paragraph 18 that the first objective of the zone established the range of principal values to be considered in the zone.

Preston CJ found also that *"The second objective is declaratory: the limited range of development that is permitted without or with consent in the Land Use Table is taken to be development that does not have an adverse effect on the values, including the aesthetic values, of the area. That is to say, the limited range of development specified is not inherently incompatible with the objectives of the zone"*.

In response to *Nessdee*, I have provided the following review of the zone objectives:

It is considered that notwithstanding the breach of the non-discretionary standard in relation to the minimum site area of the purposes of a detached secondary dwelling under 53(2)(a) of the Housing SEPP, the proposed additions and alterations to the existing dwelling and the inclusion of a new detached secondary dwelling will be consistent with the individual Objectives of the R1 General Residential Zone under MLEP 2013, as follows:

- *To provide for housing needs of the community*

Comment: The proposed secondary dwelling will provide for additional housing opportunity in the locality, which will serve the housing needs of local community.

- *To provide for a variety of housing types and densities*

The proposed secondary dwelling will add to the variety of housing types in the immediate

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area and will provide for increased housing opportunity for the future occupants.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents*

The proposed secondary dwelling will enhance the existing residential accommodation within the site and does not propose any other alternate land use.

Accordingly, it is considered that the site may be further developed with a variation to the prescribed minimum site area control, whilst maintaining consistency with the zone objectives.

7.5 Has the Council obtained the concurrence of the Secretary?

The Council can assume the concurrence of the Director – General with regards to this clause 4.6 variation.

7.6 Has the Council considered the matters in clause 4.6(5) of MLEP 2013?

The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed additions alterations to the existing dwelling and the introduction of the new secondary dwelling for the particular site and this design is not readily transferrable to any other site in the immediate locality, wider region of the State and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment.

As the proposed development is in the public interest because it complies with the objectives of the development standard and the objectives of the zone there is no significant public benefit in maintaining the development standard.

There are no other matters required to be taken into account by the Secretary before granting concurrence.

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8.0 Conclusion

This development proposes a departure from the non-discretionary development standard under Clause 53 of the Housing SEPP, which prescribes a minimum site area of 450m² for development for the purposes of a detached secondary dwelling.

The works which are the subject of this application propose the construction of a new detached secondary dwelling and with the site having an area of 341.5m², the site area does not comply with the non-discretionary development standard of 450m².

The existing site area will present a variation to the non-discretionary development standard of 108.5m² or 24.1%.

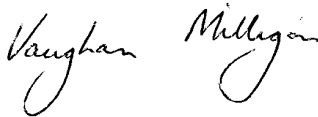
This request for variation of the non-discretionary development standard relating to a minimum site area as detailed under Clause 53(2)(a) of the Housing SEPP, adequately demonstrates that the objectives of the standard will be met.

As demonstrated within the architectural design prepared by Paul Carrick & Associates, the existing site appropriately supports the proposed additions and alterations to the existing dwelling and the inclusion of the new detached secondary dwelling to replace an existing secondary dwelling within the site results in a development which is complementary to the surrounding locality.

The proposed development is considered to promote the orderly and efficient use of the land in accordance with the objectives of the Act.

The circumstances of this matter, the non-compliance with the minimum site area is unreasonable and unnecessary in this instance.

In summary, the proposal satisfies all of the requirements of clause 4.6 of MLEP 2013 and the exception to the non-discretionary development standard under Clause 53(2)(a) of the Housing SEPP is reasonable and appropriate in the circumstances of the case.



VAUGHAN MILLIGAN
Town Planner

ITEM 5.2**DA2022/1693 - 15 ALFRED ROAD, BROOKVALE -
DEMOLITION WORKS, SUBDIVISION OF ONE LOT INTO TWO
LOTS AND CONSTRUCTION OF A DWELLING HOUSE****AUTHORISING MANAGER**

Rod Piggott

TRIM FILE REF

2023/581391

ATTACHMENTS

- 1 [↓ Assessment Report](#)
- 2 [↓ Site Plans & Elevations](#)
- 3 [↓ Clause 4.6](#)
- 4 [↓ Clause 4.6 - Proposed Lot 1](#)

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Minimum Lot Size Development Standard of Clause 4.1 pursuant to clause 4.6 of WLEP 2011 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **grants deferred commencement approval** of Application No. DA2022/1693 for demolition works, subdivision of one lot into two lots and construction of a dwelling house on land at Lot 3 DP 522694, 15 Alfred Road, BROOKVALE subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1693
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Responsible Officer:	Gareth David
Land to be developed (Address):	Lot 3 DP 522694, 15 Alfred Road BROOKVALE NSW 2100
Proposed Development:	Demolition works, subdivision of one lot into two lots and construction of a dwelling house
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Samuel Charles Williams Annika Joy Williams
Applicant:	Pcl & Apr Pty Ltd

Application Lodged:	11/11/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New second occupancy
Notified:	17/11/2022 to 01/12/2022
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	4.1 Minimum subdivision lot size: 5.3-15.2%
Recommendation:	Deferred Commencement Approval

Estimated Cost of Works:	\$ 801,075.00
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EXECUTIVE SUMMARY

This development application seeks consent for demolition works, subdivision of one (1) lot into two (2) and the construction of a new dwelling and garage on proposed Lot 1. The existing dwelling house onsite will be retained on proposed Lot 2.

The proposal involves variations to the minimum lot size development standard, which prescribes a 600sqm minimum lot size. Proposed Lot 1 is 568.45sqm (751sqm when including the existing Right of Carriageway) and proposed Lot 2 is 509sqm. This represents respective variations from the minimum lot size development standard of 5.3% and 15.2%. Given the variations to the minimum lot size

development standard is greater than 10%, the application is referred to the Northern Beaches Local Planning Panel (NBLPP) for determination.

The applicant has submitted a request to vary the minimum subdivision lot size development standard under Clause 4.6 of WLEP 2011. The Clause 4.6 variation seeks to justify that there are sufficient environmental planning grounds to vary the development standard and that strict compliance is unreasonable and unnecessary in this instance. Council supports the applicant's justification to vary the development standard in this instance. The immediate locality has a varied range of lot sizes, many of which are below 600sqm. The configuration and patterns of lots in the immediate vicinity are also highly variable. Overall, it is considered that the proposal maintains the local residential character by providing for the subdivision of land and resultant built form this is not inconsistent with the pattern, size and configuration of lots and development in the surrounding area.

The Clause 4.6 variation request for the non-compliance with the minimum lot size arises primarily due to unusual configuration of the existing lot, the exclusion of an existing Right of Carriageway from the lot size calculation and the configuration and patterns of lots in the immediate vicinity.

Following notification and preliminary assessment of the proposal, a number of concerns were raised with the applicant. These concerns included lack of owners consent for the continued use of the adjoining land's (No.17 Alfred Road) driveway (and Right of Carriageway), inadequate stormwater design, impacts of the proposed secondary dwelling, and Engineering and Landscaping referral concerns. Amended plans and additional information were submitted to address these concerns.

These amended plans included the deletion of the proposed secondary dwelling, an amended stormwater design and the provision of owners consent from No.17 Alfred Road. The assessment of the application is based on the amended plans.

A total of two (2) submissions were received in response to the notification. One submission raised concerns regarding the proposed access to the lots over adjoining land and that no consent was granted for use of this driveway or associated upgrades to facilitate the proposal. Following this submission owners consent was provided from the owners of No.17 Alfred Road for the upgrade works and increased use of this existing Right of Carriageway. The second submission received raised concern that the proposed passing bay would impact an existing Right of Carriageway which burdens the subject site (and benefits No.13 Alfred Road). This submission also raised concern that the existing building on site is located within the Right of Carriageway and currently prevents the use of this easement. To address this submission, conditions of consent are to be imposed requiring "Passing Bay 1", to be reduced in width by 0.5m. This will enable an unimpeded width of 3.2m to be retained within this Right of Carriageway easement. It is considered that the retention of a unimpeded width of 3.2m is sufficient to facilitate vehicle access in the future (if required) and will retain the purpose of this Right of Carriageway easement. During the assessment of this application, amended plans were also received which deleted the proposed secondary dwelling which was proposed to be partially built within this Right of Carriageway easement. The proposal also seeks to demolish an existing building and deck which is partially built within this Right of Carriageway easement. If approved, conditions are to be imposed requiring this building and deck be wholly demolished and removed prior to the issue of the Subdivision Certificate, in accordance with the approved demolition plan.

Stormwater from the proposed allotments are proposed to be managed through a drainage easement to Binba Place through the adjoining property to the south (5 Binba Place). Council's Development Engineer has supported this in principle, subject to a deferred commencement condition requiring the easement to be legally created. The subject consent will not become operational until this easement is appropriately negotiated and formed with relevant parties/neighbours. Operational

conditions will then apply to the construction and ongoing management of this system.

Potential amenity issues to surrounding neighbours have been reviewed and have been determined to be reasonable having regard to the context and spatial relationships.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that, on balance the proposal (as amended) is a suitable and appropriate development for the subject site, for the reasons outlined in this report. When assessed on its merits, the proposed subdivision arrangement is found to be acceptable and consistent with the existing subdivision pattern in the immediate vicinity.

Accordingly, the application is recommended for deferred commencement approval, subject to the attached conditions.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development seeks consent for demolition works, subdivision of one lot into two and the construction of a new dwelling. In detail this involves:

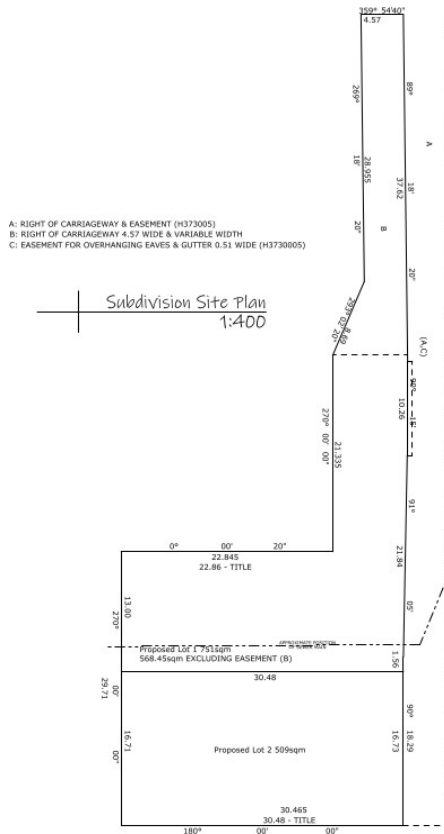
- Torrens Title Subdivision of one (1) lot into two (2) lots (Proposed Lot 1 and Proposed Lot 2)
- Demolition of the existing built structures on Proposed Lot 1 including the single storey rendered outbuilding and associated decking.
- Construction of a new two storey dwelling house and detached garage on Proposed Lot 1
- Retention of the existing dwelling house on Proposed Lot 2
- Landscaping works
- Driveway and passing bay upgrades
- Stormwater infrastructure works

The proposed lot sizes are as follows:

Proposed Lot 1: 568.45 sqm (751sqm including the existing Right of Carriageway)

Proposed Lot 2: 509sqm

The subject site benefits from an existing right of way over Lot C DP410667 (17 Alfred Street) which is proposed to provide vehicular access to both lots.



(Figure 1: Plan of Subdivision)

Amended Plans

Following concerns raised by Council, amended plans were received which deleted the proposed new secondary dwelling from the plans and amended the landscape and stormwater plans. An email was sent to relevant objectors and neighbours notifying them of amended plans. In accordance with Northern Beaches Community Participation Plan amendments which have a reduction of impact or minimal environmental impact to do have to be formally re-notified. It is considered the proposed amendments, which included the deletion of the proposed secondary dwelling, would have an overall reduction of impact.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;

- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.1 Minimum subdivision lot size
 Warringah Local Environmental Plan 2011 - 1.9A Suspension of covenants, agreements and instruments
 Warringah Local Environmental Plan 2011 - 6.2 Earthworks
 Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land
 Warringah Development Control Plan - B3 Side Boundary Envelope
 Warringah Development Control Plan - B5 Side Boundary Setbacks
 Warringah Development Control Plan - B7 Front Boundary Setbacks
 Warringah Development Control Plan - B9 Rear Boundary Setbacks
 Warringah Development Control Plan - C1 Subdivision
 Warringah Development Control Plan - C4 Stormwater
 Warringah Development Control Plan - D7 Views
 Warringah Development Control Plan - D8 Privacy

SITE DESCRIPTION

Property Description:	Lot 3 DP 522694 , 15 Alfred Road BROOKVALE NSW 2100
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Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the eastern side of Alfred Road.</p> <p>The site is irregular (battleaxe) in shape with a frontage of 4.57m along Alfred Road and a depth of 88m. The site has a surveyed area of 1259.4m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a single storey dwelling at the rear of the site and a detached outbuilding and shed located centrally. Access to the site is provided via a Right of Carriageway easement located on and shared with No.17 Alfred Road.</p> <p>The site slopes away from Alfred Road towards the rear (eastern) boundary by approximately 8m.</p> <p>The site contains 6 prescribed trees, primarily at the rear of the site. One (1) tree was considered to be worthy of category A retention value. This large Melaleuca quinquenervia is located on the southern boundary</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by detached residential dwellings of varying architectural style. The lot pattern within the immediate area is varied.</p>
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Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

- **DA2003/0007** - Development Application for a First Floor Addition & Detached Workshop & Laundry - Approved 22 April 2003 (Not constructed)
- **PLM2015/0135** - Torrens Title Subdivision of one (1) lot into two (2) lots and construct a new dwelling house - The advice concluded that: *The proposal is supported subject to changes to the plans and information required to address the comments provided in these notes.*
The following was also specified *"it is recommended to widen Lot A to 13m. This will ensure compliance with the minimum width and better compliance with the building envelope for Lot A. Increasing the setback to 2.0m for the western boundary will improve spatial separation since the new dwelling blocks in the rear of No 13 Alfred Street"*

APPLICATION HISTORY

14/02/2023

Council wrote to the applicant, raising concerns primarily in relation to:

- Owners Consent for the use of the Right of Way (ROW) easement over No.17 Alfred Road's land
- Minimum lot size
- Inadequate Clause 4.6
- Stormwater
- Landscaped Open Space non-compliance and impacts to trees
- Location of Proposed Secondary Dwelling
- Engineering and landscaping concerns

11/04/2023

Amended plans and additional information were submitted to address Council's concerns. The amended plans resulted in:

- Deletion of the proposed secondary dwelling
- Increased landscaped open space
- Amended landscape plan
- Amended stormwater plans
- Owners consent from No.17 Alfred Rd for the use of the Right of Way

An email was sent to relevant objectors and neighbours notifying them of amended plans. In accordance with Northern Beaches Community Participation Plan amendments which have a reduction of impact or minimal environmental impact to do have to be formally re-notified. It is considered the proposed amendments, which included the deletion of the proposed secondary dwelling, would have an overall reduction of impact.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended plans and owners consent.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 17/11/2022 to 01/12/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 3 submission/s from:

Name:	Address:
Withheld	BROOKVALE NSW 2100
Mr Roald Jorgen De Groot	13 Alfred Road BROOKVALE NSW 2100
Carmen Audrey Sik	13 Alfred Road BROOKVALE NSW 2100

The following issues were raised in the submissions:

- **Use of shared driveway for access to the proposed lots**

The submissions raised concerns that the proposal seeks to obtain access to the proposed lots over adjoining land and that no consent was granted for use of this driveway or associated upgrades to facilitate the proposal.

Comment:

Vehicular access to the subject site (15 Alfred Road) is obtained via an existing Right of Carriageway access easement shared with and located upon Lot C DP410667 (No.17 Alfred Road). This is identified as on the survey as "A: *RIGHT OF CARRIAGEWAY & EASEMENT (H373005)*". Access to the proposed allotments under this Development Application is proposed to be retained from this existing Right of Carriageway located on No.17 Alfred Street. Following this submissions, owner's consent was provided from the owners of No.17 Alfred Road for the upgrade works and increased use of this Right of Carriageway.

- **Impact of the proposed passing bay on the existing right of carriageway**

A submission was received from the owners of No.13 Alfred Road, Brookvale, concerned that the proposed passing bay would impact an existing Right of Carriageway which burdens the subject site:

"Is the passing bay impacting our right of carriageway and/or possibly blocking access of using the right of carriageway?"

Comment:

This matter has been addressed in detail within Clause 1.9A *Suspension of covenants, agreements and instruments* of this report.

In summary, the subject site is burdened by a Right of Carriageway easement (within DP522694) identified as on the survey as "B: *RIGHT OF CARRIAGEWAY 4.57 WIDE & VARIABLE WIDTH*". This Right of Carriageway benefits Lot 2 (13 Alfred Road, Brookvale) within DP522694. However, this access handle (and Right of Carriageway) is unformed and consists of landscaping and is not used for access by the subject lot (15 Alfred Road) or the adjoining lot (13 Alfred Road). Lot 2 (13 Alfred Road, Brookvale) have their own separate vehicular access from Alfred Road and do not rely on this Right of Carriageway easement located on the subject site for access. This Right of Carriageway easement does not contain a formed driveway and an existing fence currently restricts any potential use by 13 Alfred Road.

In order to facilitate the proposed subdivision subject of this Development Application (DA2022/1693), the application seeks to construct a new passing bay, identified on the plans as "Passing Bay 1", within the Right of Carriageway easement located on the subject site. This passing bay is proposed to be 1.79m in width (within the Right of Carriageway). If approved, a condition of consent is to be imposed requiring "Passing Bay 1", to be reduced in width by 0.5m. This will enable an unimpeded width of 3.2m to be retained within this Right of Carriageway easement. It is considered that the retention of a unimpeded width of 3.2m is sufficient to facilitate vehicle access in the future (if required) and will retain the purpose of this Right of Carriageway easement. Conditions have also been imposed ensuring that new tree planting is not permitted within the Right of Carriageway.

Subject to recommended conditions, it is considered that the Right of Carriageway easement will retain sufficient dimensions to facilitate future access of adjoining properties (if required).

- **Impacts of the existing building on site on the existing right of carriageway**
A submission was received from the owners of No.13 Alfred Road, concerned that the existing building on site is located within the existing Right of Carriageway and prevents the use of this easement:

"The plans state also that the existing rendered building (which has a lean on structure that is build on the easement) will be demolished. Can be advised at what stage that will happen during the process? The lean on structure, amongst other things, is preventing us from making proper use of the right of carriageway with vehicles at the moment."

Comment:

This matter has been addressed in detail within Clause 1.9A *Suspension of covenants, agreements and instruments* of this report.

During the assessment of this application, amended plans were received which deleted the "proposed secondary dwelling" which was proposed to be partially built within this Right of Carriageway easement. The proposal also seeks to demolish an existing building and deck which is partially built within this Right of Carriageway easement. If approved, conditions are to be imposed requiring this existing building and deck to be wholly demolished prior to the issue of the Subdivision Certificate, in accordance with the approved Demolition Plan.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>Supported subject to conditions</p> <p>The application has been investigated with respects to aspects relevant the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>

Landscape Officer	<p>Supported subject to conditions</p> <p>The application is assessed by Landscape Referral against Warringah Local Environmental Plan (WLEP) 2011 and the following Warringah Development Control Plan (WDGP) 2011 controls (but not limited to):</p> <ul style="list-style-type: none"> • C1 Subdivision • D1 Landscaped Open Space and Bushland Setting • E1 Preservation of Trees or Bushland Vegetation and E2 Prescribed Vegetation <p>Under C1 Subdivision, Landscape Referral has considered the application in terms of the capacity of proposed new lots to provide sufficient area for landscaping and private open space. It is noted that the matter of private open space area for Lot 1 containing a new dwelling and a secondary dwelling is not well defined on the plans by inclusion of dimensions and the matter of compliance shall be dealt with by the Assessing Planning Officer, whilst it is reported that proposed Lot 2 retains the existing dwelling and landscaped area is reported as compliant.</p> <p>A Landscape Plan is submitted indicating retention of existing trees and vegetation outside of proposed development works. As such vegetation is proposed for retention, and along with the addition of additional trees and vegetation proposed on the Landscape Plan, the development proposal is able to satisfy the objectives of D1, and conditions shall be imposed for retention of such vegetation identified on the Landscape Plan and completion of the proposed additional planting. It is noted that trees and vegetation on the Landscape Plan are numbered in co-ordination with the Survey Plan. The Landscape Plan includes "new feature trees" planting within the right-of-way for adjoining property and it is advised that no new planting is to be provided within the existing right-of-way, and conditions shall be imposed.</p>
Internal Referral Body	<p>Comments</p> <p>An Arboricultural Impact Assessment is submitted and provides tree protection measures for the existing tree 1 - Melaleuca quinquenervia (tree 27 on Survey and Landscape Plan), and conditions shall be imposed. Additionally the existing tree 6 - Eucalyptus citriodora (tree 42 in Survey and Landscape Plan) within adjoining property 13 Alfred Road shall be protected and conditions shall be imposed. Both trees shall be the subject of supervision of any excavations works by a Project Arborist. Excavation for any construction works including utility services, within the tree protection zone of existing trees retained within the property and all existing trees and vegetation within adjoining properties shall be supervised by a Project Arborist when any tree roots at or >25mm (Ø) diameter is encountered.</p>

NECC (Development Engineering)	<p>Supported subject to conditions and deferred commencement condition</p> <p>Updated comments 18/7/23. After discussions with Development assessment the further information required in the referral comments dated 30/6/23 will be required via a deferred consent condition.</p> <p>Updated comments 30/6/23 The two lot subdivision is not supported for the following reasons: 1) As previously stated in past referral comments : The applicant has not provided the previous information on the drainage easement as requested. <i>The submitted survey plan by CMS surveyors details a 2.44m wide easement abutting the southern boundary . The existing property may have benefit to this drainage easement and evidence is to be provided accordingly.</i> <i>The proposed 2 lot subdivision is to be drained to Binba Place via an approved stormwater drainage easement</i> This information has not been provided that the subject property has benefit to drain to the existing easement. 2) The DRAINS model and stormwater management plan has been reviewed and is satisfactory for proposed lot 1, however as the development is considered a low level property and is proposing to drain to a existing stormwater line of unknown capacity in accordance with Councils Water Management for development policy On site detention is to be provided for proposed lot 2 . All post developed flows are to be restricted to the 20/100 predeveloped AEP for all storms up to the 1/100 AEP. 3) The DRAINS model and in particular the II-CL Hydrological model and rainfall data needs to be checked to see it relates to Alfred street as there is a different file name.</p> <p>Updated comments 22/4/23 The application is not supported for the following reasons. 1) The stormwater drainage plans (SDP) and on site detention calculations have not been supported by a DRAINS model which is required to be submitted to Council for review (Please see previous comments.) The drainage system is to be connected to an existing interallotment drainage line and the invert level of this connection point is to be determined and detailed on the SDP. 2) The applicant has not provided the previous information on the drainage easement as requested. <i>The submitted survey plan by CMS surveyors details a 2.44m wide easement abutting the southern boundary . The existing property may have benefit to this drainage easement and evidence is to be provided accordingly.</i></p>
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	<p><i>The proposed 2 lot subdivision is to be drained to Binba Place via an approved stormwater drainage easement</i></p> <p><i>3) The ROW plan features multiple reversing /manoeuvring areas and advice is to be sought from Councils traffic engineer as to the suitability of the off site reversing /manoeuvring areas . Additionally the requirement of turning bay 1 is to be justified and if not required should be deleted.</i></p> <p>Previous Comments The proposed 2 lot subdivision and housing construction is not supported for the following reasons:</p> <p>1) Stormwater Management The stormwater concept plan as prepared by VNK consulting details discharge of the site stormwater via a level spreader towards the existing residence at 18C Alfred street . In accordance with Councils water management policy for development level spreader may be approved only for single residential housing and not for proposed subdivisions. The submitted survey plan by CMS surveyors details a 2.44m wide easement abutting the southern boundary . The existing property may have benefit to this drainage easement and evidence is to be provided accordingly. The proposed 2 lot subdivision is to be drained to Binba Place via an approved stormwater drainage easement</p> <p>2) In relation to the stormwater plans the engineer is to provide the minimum summary information as required by section 9.1 of Councils water management policy for development . This is to include a DRAINS model to demonstrate the pre developed (state of nature flows) are less than the post developed flows up and to including the 1/100AEP for a range of storm events and durations.</p> <p>3) The proposed subdivision layout The proposed subdivision layout is to detail dimensions of the proposed vehicle passing bays in accordance with the former Warringah Council DCP and Subdivision clauses.</p>
NECC (Water Management)	<p>Supported subject to conditions</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Northern Beaches Water Management for Development Policy (WM Policy); and • Relevant LEP and DCP clauses. <p>The development proposed impervious is marginally over 40%, the stormwater system is acceptable from a water management point of view.</p> <p>Rainwater Tank as per BASIX certificates.</p>

Internal Referral Body	Comments
	Subject to conditions.
Traffic Engineer	<p>Supported subject to conditions</p> <p>It is noted that the subdivision application incorporates a long driveway of 3.5m in width with two passing bays of 5m in width. AS2890.1 clause 3.2.2 requires passing bays to be 5.5m in width to allow adequate clearance for two vehicles to pass however it is noted that widening to 5.5m would impact upon the width of the adjacent property access and the 5.0m width is therefore acceptable. As noted by the Development Engineers the plans also make allowance for two turning bays. While Turning Bay 2 is considered necessary to allow for forwards egress from parking spaces 1A & 1B, there appears to be no need for Turning Bay 1 as vehicles turning forwards into the adjacent garage can turn reverse from the garage to exit the property in a forwards direction. Turning Bay 1 can therefore be removed from the plans</p>
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.1381366S dated 21 March 2023).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	50

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Warringah Local Environmental Plan 2011

Is the development permissible?	Yes
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After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size:	600 sqm	Proposed Lot 1: 751sqm or 568.45sqm (without ROW)	5.3%	Yes No
		Proposed Lot 2: 509sqm	15.2%	
Height of Buildings:	8.5m	8.3m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.6 Subdivision - consent requirements	Yes
2.7 Demolition requires consent	Yes
4.1 Minimum subdivision lot size	No (see detail under Clause 4.6 below)
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	Yes
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

1.9A Suspension of covenants, agreements and instruments

Clause 1.9A of Warringah Local Environmental Plan 2011 states that for the purpose of enabling development on land in any zone, any agreement, covenant or other similar instrument that restrict the carrying out of that development do not apply to the extent necessary to serve that purpose. However, this does not apply in the case of any agreement imposed by Council.

The subject site is burdened by a Right of Carriageway easement within DP522694 identified as on the survey as "*B: RIGHT OF CARRIAGEWAY 4.57 WIDE & VARIABLE WIDTH*". The location and extent of this Right of Carriageway is demonstrated in figure 1 below (highlighted in yellow).

This Right of Carriageway benefits Lot 2 (13 Alfred Road, Brookvale) within DP522694. However, this access handle (and Right of Carriageway) is unformed, consists of landscaping and is not used for vehicle access by the subject lot (15 Alfred Road) or the adjoining lot (13 Alfred Road).

Vehicular access to the subject site (15 Alfred Road) is gained via Right of Carriageway access easement shared with and located upon Lot C DP410667 (No.17 Alfred Road). This is identified as on the survey as "A: RIGHT OF CARRIAGEWAY & EASEMENT (H373005)". Access to the proposed allotments under this Development Application is proposed to be retained from this existing Right of Carriageway located on No.17 Alfred Street. Owners consent has been provided from the owners of No.17 Alfred Road for the upgrade works and increased use of this ROW.

Lot 2 (13 Alfred Road, Brookvale) have their own separate vehicular access from Alfred Road and do not rely on this Right of Carriageway easement located on the subject site for access. This Right of Carriageway easement does not contain a formed driveway and an existing fence currently restricts any potential use by 13 Alfred Road.

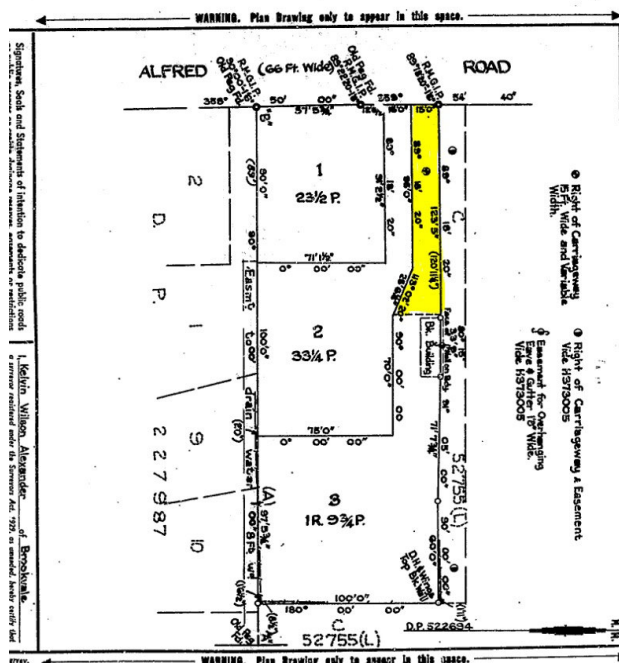


Figure 1 - Location of Right of Carriageway easement burdening the subject site (highlighted in yellow).

In order to facilitate the proposed subdivision subject of this Development Application (DA2022/1693), the application seeks to construct a new passing bay, identified on the plans as "Passing Bay 1", within the Right of Carriageway easement burdening the subject site. This passing bay is proposed to be 1.79m in width (within the Right of Carriageway). The location of the passing bay is highlighted in figure 2 below.

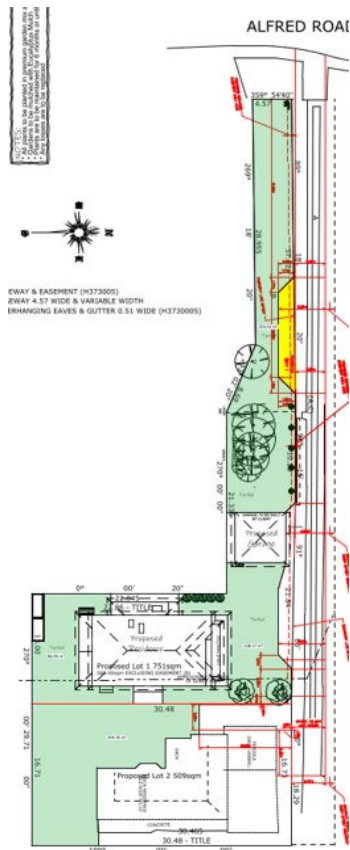


Figure 1 - Location of Passing Bay 1 (highlighted in yellow).

No owners consent has been received from the lot which benefits from this Right of Carriageway easement. Concern has also been raised by the owner of No.13 Alfred Road with regards to maintaining future access through this right of carriageway easement.

If approved, a condition of consent is to be imposed on any future consent requiring "Passing Bay 1", to be reduced in width by 0.5m (from a total of 5.5m in width to 5.0m in width). This will maintain compliance with Council's DCP standards for passing bays. This will also enable an unimpeded width of 3.2m to be retained within this Right of Carriageway easement. It is considered that the retention of a an unimpeded width of 3.2m is sufficient to facilitate vehicle access in the future (if required) and will retain the purpose of this Right of Carriageway easement. Conditions have also been imposed ensuring that new tree planting is not permitted within the right-of-way.

During the assessment of this application, amended plans were also received which deleted the "proposed secondary dwelling" which was proposed to be partially built within this Right of Carriageway easement. The proposal also seeks to demolish an existing building and deck which is currently partially built within this Right of Carriageway easement. If approved, conditions are to be imposed requiring this building and deck be wholly demolished and removed prior to the issue of the Subdivision Certificate, in accordance with the approved Demolition Plan.

Subject to recommended conditions, it is considered that the Right of Carriageway easement will retain sufficient dimensions to facilitate future access of adjoining properties (if required).

4.1 Minimum subdivision lot size

Clause 4.1 requires the size of any lot resulting from a subdivision of land not to be less than 600sqm for this area. This clause specifies that:

The proposed subdivision would result in proposed "Lot 2" having lot size of 509sqm which represents a 15.2% variation from this development standard.

Proposed "Lot 1" will have a total site area of 751sqm. However, this lot will be burdened by an existing Right of Carriageway (B: RIGHT OF CARRIAGEWAY 4.57 WIDE & VARIABLE WIDTH). Clause 4.1 specifies that Right of Carriageways cannot be included within the lot size calculation. This will result in the proposed "Lot 1" having lot size of 568.45sqm (excluding the ROW) which represents a 5.3% variation from this development standard.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Minimum Subdivision Lot Size
Requirement:	600sqm
Proposed:	Lot 1: 568.45sqm (excluding existing ROW) Lot 2: 509sqm
Percentage variation to requirement:	Lot 1: 5.3% Lot 2: 15.2%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.1 - Minimum subdivision lot size development standard, has taken into consideration the judgements contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 4.6 Exceptions to development standards:

(1) *The objectives of this clause are as follows:*

(a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*

(b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Comment:

Clause 4.1 - Minimum subdivision lot size development standard is not expressly excluded from the

operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Secretary has been obtained.

Clause 4.6 (4)(a)(i) (Justification) assessment:

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

Comment:

The Applicant's written request has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not

defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The applicants written request argues, in part:

- *There are several examples of sites of the same (or similar) area as proposed in the immediate vicinity and the proposed development will be consistent. This includes existing lots to the north, south, east and west on Alfred Road, Pine Avenue and Binba Place. The closest of these being the adjoining undersized lot at 17 Alfred Road.*
- *The setting and context with similar lot sizes demonstrates that the varied lot size is reasonable and that it is consistent with clause 1.3(c) and (d).*
- *This site easily complies with the DCP minimum building area, while also complying with all DCP setbacks and the lot width control.*
- *The non-compliant lot size allowing for subdivision will not impact on the natural environment. Council DCP landscape controls are relevant and no area is lost or impacted through the variation, with the two proposed lot still able to ensure ample landscape area satisfying CI1.3(b). The natural environment is unaffected by the departure to the development standard and it would be unreasonable for the development to be refused on this basis.*
- *The ability to provide appropriate dwelling envelopes and development opportunities demonstrates fulfillment of clause 1.3(b) and (c).*
- *The extent of the variation is considered to be in the public interest as the proposal remains consistent with the objectives of the zone allowing for future development opportunities of appropriate and reasonable housing suitable for the local community. Compliance with the lot size development standard based on this would be unreasonable, with clause 1.3(c) demonstrated as fulfilled.*
- *Compliant access can be provided via the existing driveway off Alfred Road (a Right of Way), ensuring safe vehicular access to the proposed lot.*
- *The variation to lot size as detailed above will have positive economic impacts for the site and the local area allowing for additional housing in close proximity to services satisfying CI1.3(b) and accordingly refusal of the development based on this reason would be unreasonable.*
- *The minor variation does not result in an atypical lot layout considerate of the surrounds. The*

total built area and landscaped area required will achieve compliance with the relevant Council controls.

- *The future form and scale of the new homes will be consistent with the established character of the local neighbourhood;*
- *The residential and visual character of the site and its surrounds will remain as existing. Historically the ROW, that is to be excluded from the site area of Proposed Lot 1, has not been used as a carriageway. Accordingly, the site will appear as a compliant lot, being 751m² (if the easement were to be included). Further, the streetscape character of Alfred Road will be retained (Figure 3 below), with no structures to be built on the easement.*

It is agreed that the reasons provided by the applicant demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances. Furthermore, sufficient planning grounds to justify contravening the development standard have been articulated appropriately. Therefore, the applicants written request has demonstrated that variation to Clause 4.1 *Minimum subdivision lot size* of Warringah Local Environmental Plan 2011 is supportable in this circumstance.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

Clause 4.6 (4)(a)(ii) (Public Interest) assessment:

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the minimum subdivision lot size development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.1 – 'Minimum subdivision lot size' of the WLEP 2011 are:

- (1) The objectives of this clause are as follows:

(a) to protect residential character by providing for the subdivision of land that results in lots that are consistent with the pattern, size and configuration of existing lots in the locality.

Comment:

The immediate locality has a varied range of lot sizes, many of which are below 600sqm. The configuration and pattern of lots is also varied in the immediate vicinity. Overall, the proposal protects the local residential character by providing for the subdivision of land that results in additional lots that are not inconsistent with the pattern, size and configuration of existing lots in the locality.

(b) to promote a subdivision pattern that results in lots that are suitable for commercial and industrial development.

Comment:

The proposal is located in a R2 Low Density Residential zone and is surrounded by residential development. Therefore this objective is not applicable.

(c) to protect the integrity of land holding patterns in rural localities against fragmentation.

Comment:

N/A - The subject site is not located in a rural locality.

(d) to achieve low intensity of land use in localities of environmental significance.

Comment:

The application proposes two allotments that will be used for low density residential land uses. It is not considered that the subject site is of any environmental significance.

(e) to provide for appropriate bush fire protection measures on land that has an interface to bushland.

Comment:

N/A - The site is not located on Bush Fire Prone Land

(f) to protect and enhance existing remnant bushland.

Comment:

The site is not impacted by remnant bushland. The proposal will not result in the removal of significant trees or vegetation.

(g) to retain and protect existing significant natural landscape features.

Comment:

The proposal will not unreasonably impact upon significant landscape features. The proposal has been reviewed by Council's Landscape Officer who has raised no objections (subject to conditions).

(h) to manage biodiversity.

Comment:

The proposal will not result in unreasonable impacts to biodiversity.

(i) to provide for appropriate stormwater management and sewer infrastructure.

Comment:

Stormwater from the proposed allotments are proposed to be managed through a drainage easement to Binba Place through the adjoining property to the south (5 Binba Place). Council's Development Engineer has supported this in principle, subject to a Deferred Commencement condition requiring the easement to be legally created. The subject consent will not become operational until this easement is appropriately negotiated and formed with relevant parties/neighbour.

Zone objectives

The underlying objectives of the R2 Low Density Residential zone are:

- *To provide for the housing needs of the community within a low density residential environment.*

Comment:

The proposal will result in two allotments that will allow for additional housing to meet the needs of the community within a low density residential environment.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment:

N/A - the application does not propose a change to land use. The land will be retained as low density residential.

- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Comment:

The proposal has demonstrated that the proposed allotments will ensure low density environments are characterised by landscaped settings, compliant with Warringah DCP requirements and that are in harmony with the natural environment of Warringah. Furthermore, Council's Landscape Officer has reviewed the proposal and is supportive of the proposal

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone.

Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning & Infrastructure, advises that the concurrence of the Secretary may be assumed for exceptions to

development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Minimum Subdivision Lot Size Development Standard is assumed by the Local Planning Panel.

6.2 Earthworks

The objectives of Clause 6.2 - 'Earthworks' require development:

- (a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, and*
- (b) to allow earthworks of a minor nature without requiring separate development consent.*

In this regard, before granting development consent for earthworks, Council must consider the following matters:

- (a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality*

Comment: The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

- (b) the effect of the proposed development on the likely future use or redevelopment of the land*

Comment: The proposal will not unreasonably limit the likely future use or redevelopment of the land.

- (c) the quality of the fill or the soil to be excavated, or both*

Comment: The excavated material will be processed according to the Waste Management Plan for the development.

- (d) the effect of the proposed development on the existing and likely amenity of adjoining properties*

Comment: The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the recommendation of this report to limit impacts during excavation/construction.

- (e) the source of any fill material and the destination of any excavated material*

Comment: The excavated material will be processed according to the Waste Management Plan for the development.

- (f) the likelihood of disturbing relics*

Comment: The site is not mapped as being a potential location of Aboriginal or other relics.

- (g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area*

Comment: The site is not located in the vicinity of any watercourse, drinking water catchment or

environmentally sensitive areas.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

6.4 Development on sloping land

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

(a) the application for development has been assessed for the risk associated with landslides in relation to both property and life, and

Comment: The applicant has submitted a Preliminary Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective and therefore, Council is satisfied that the development has been assessed for the risk associated with landslides in relation to both property and life.

(b) the development will not cause significant detrimental impacts because of stormwater discharge from the development site, and

Comment: The applicant has submitted a Preliminary Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective. The application has also been assessed by Council's Development Engineers in relation to stormwater. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will not cause significant detrimental impacts because of stormwater discharge from the development site.

(c) the development will not impact on or affect the existing subsurface flow conditions.

Comment: The applicant has submitted a Preliminary Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective. The application has also been assessed by Council's Development Engineers in relation to stormwater. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will not result in adverse impacts or effects on the existing subsurface flow conditions.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	6.4m	N/A	Yes
B3 Side Boundary Envelope	4m (E)	Outside Envelope	N/A	No
	4m (W)	Within Envelope	N/A	Yes
B5 Side Boundary Setbacks (Lot 1)	0.9m (E)	1.3m (Proposed dwelling)	N/A	Yes

	0.9m (W)	1m (Proposed dwelling)	N/A	Yes
B5 Side Boundary Setbacks (Lot 2)	0.9m (E)	2.9m (Existing dwelling)	N/A	Yes
	0.9m (W)	2.2m (Existing dwelling) Nil (Existing hardstand parking)	N/A 100%	Yes No
B7 Front Boundary Setbacks (Lot 1)	6.5m (N)	1m (Garage) 7.5m (Proposed dwelling)	N/A	No
B7 Front Boundary Setbacks (Lot 2)	6.5m (N)	1.6m (Existing deck) 7.5m (Existing dwelling)	N/A	Yes - Existing structures
B9 Rear Boundary Setbacks (Lot 1)	6m (S)	1m (Garage) 5.5m (Dwelling)	83.4%	No
B9 Rear Boundary Setbacks (Lot 2)	6m (S)	7.7m (Existing dwelling)	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting (Lot 1)	40% (300.4sqm)	55% (413sqm)	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting (Lot 2)	40% (203.6sqm)	40.2% (204.5sqm)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	No	Yes
C1 Subdivision	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes

D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	No	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B3 Side Boundary Envelope

Description of non-compliance

Clause B3 of the WDCP 2011 stipulates that buildings are to be projected at 45 degrees from 4m above the existing ground level, measured from the side boundaries. The proposed new dwelling will encroach into the side boundary envelope eastern as depicted in figures 1 below.

The figure below show the location and extent of the non-compliance.



Figure 1: Side boundary envelope breach on the eastern elevation shown in pink

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- ***To ensure that development does not become visually dominant by virtue of its height and bulk.***

Comment:

The apparent size of the proposed development is not inconsistent with the size and scale of more recent development throughout the immediate locality. The proposal will present as a two storey dwelling and would be within the prescribed 8.5m height control. The proposed dwelling will be adequately setback from the front, side and rear boundaries and will meet stipulated wall height controls. The dwelling will be appropriately articulated using recessed and modulated walls, balconies, eaves and changes in roof formation break up built form. In this regard, it is considered that the proposal will not become visually dominant by virtue of its height and scale.

- ***To ensure adequate light, solar access and privacy by providing spatial separation between buildings.***

Comment:

It is considered that the new dwelling provides adequate spatial separation between adjoining buildings. The application has demonstrated that the proposal will not have an unreasonable impact with regards to solar access. The adjoining properties will maintain solar access in accordance with the DCP requirements. Privacy has been addressed within Section D8 of this report. Subject to recommended conditions, it is considered no unreasonable privacy impacts would occur as a result of the development.

- ***To ensure that development responds to the topography of the site.***

Comment:

The development is considered to generally respond to the natural topography of the site. The application does not include any significant excavation.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance

B5 Side Boundary Setbacks

Description of Non-Compliance

Clause B5 Side Boundary Setbacks requires a setback of 0.9m to each side boundary to sites located within the R2 Low Density Residential zone.

The proposal will retain existing hardstand parking spaces which will have a nil setback from the future western side setback of Proposed Lot 2. This parking area will be open with no associated structures.

Merit Consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- ***To provide opportunities for deep soil landscape areas.***

Comment

The hardstand parking is existing and will not result in a significant reduction in deep soil landscaped areas on the site. The proposed development exceeds the minimum landscaped open space requirement of 40% of site area. Adequate deep soil area is maintained.

- ***To ensure that development does not become visually dominant.***

Comment

The hardstand parking is existing and will not include any structures. As such the development will not become visually dominant.

- ***To ensure that the scale and bulk of buildings is minimised.***

Comment

As above the hardstand parking is existing and will not include any structures. The proposal as a whole is considered an acceptable scale for a low density residential area.

- ***To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.***

Comment

The proposed development is not anticipated to cause an unreasonable impacts to the privacy, amenity, or solar access.

- ***To provide reasonable sharing of views to and from public and private properties.***

Comment

The encroachment into the side setback area will not result in any unacceptable view loss from surrounding private properties or the public domain.

Having regard to the above assessment, it is concluded that the outcomes of the clause have been achieved. Therefore, the application is supported on merit in this particular circumstance.

B7 Front Boundary Setbacks

Description of Non-Compliance

Clause D7 Front Boundary Setbacks stipulate that all structures should maintain a minimum front setback of 6.5m.

The existing dwelling house on proposed Lot 2 and the proposed dwelling on proposed Lot 1 have been assessed. Given the proposed lot configurations, the orientation of the proposed dwellings and

the context of surrounding properties, it is considered reasonable to assess the northern boundary as the "front boundary" in this instance.

The front setback of the existing dwelling house (deck and pergola) on proposed Lot 2 will result in a non-compliance with the numerical requirements of this clause with a front setback from the northern boundary of 1.6m. It should be noted that this non-compliance relates to an open deck and pergola and the facade of the existing dwelling is setback 7.5m from this boundary.

The proposed garage located on proposed Lot 1 will result in a non-compliance with the numerical requirements of this clause with a front setback from the northern boundary of 1m. It should be noted that the proposed dwelling is setback 7.5m from this boundary. It is also of note that the proposed garage will be setback 49m from the street frontage.

Merit Consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- ***To create a sense of openness.***

Comment

The existing sense of openness when viewed from the streetscape will not be impacted by the proposal. The proposal seeks to demolish an existing outbuilding located closer to the street frontage and the proposed garage will be located 49m from the street frontage.

- ***To maintain the visual continuity and pattern of buildings and landscape elements.***

Comment

As discussed under *Clause 4.6 Exceptions to development standards* elsewhere within this report, the subdivision pattern is similar to those that currently exist within the immediate vicinity. The architectural plans for proposed Lot 1, demonstrates that the building footprint will be similar to the dwellings within surrounding battle-axe allotments. The proposal seeks to demolish an existing outbuilding, and construct garage in a similar location and setback. The design will result on a generally compliant build with acceptable amenity levels for a residential environment.

- ***To protect and enhance the visual quality of streetscapes and public spaces.***

Comment

As above, the streetscape, will remain generally similar to that of the existing. The proposal seeks to demolish an existing outbuilding located closer to the street frontage and the proposed garage will be located 49m from the street frontage.

- ***To achieve reasonable view sharing.***

Comment

The front setback encroachment is not considered to result in unacceptable view loss from the surrounding private properties

Having regard to the above assessment, it is concluded that the outcomes of the clause have been achieved. Therefore, the application is supported on merit in this particular circumstance.

B9 Rear Boundary Setbacks

Description of Non-Compliance

Clause B9 Rear Boundary Setbacks requires development to comply with a rear setback of 6.0m.

Given the proposed lot configurations, the orientation of the existing and proposed dwellings and the context of surrounding properties, it is considered reasonable to assess the southern boundary as the "rear boundary" in this instance.

The proposed dwelling on proposed Lot 1 is setback 5.5m from the southern boundary, which does not satisfy the numeric requirement.

The proposed garage on proposed Lot 1 is setback 1.0m from the the southern boundary, which does not satisfy the numeric requirement. It should be noted that the section of the lot in which the proposed garage is to be built is 8m in width.

Merit Consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- ***To ensure opportunities for deep soil landscape areas are maintained.***

Comment

The proposed development exceeds the minimum landscaped open space requirement of 40% of site area. Adequate deep soil area is maintained.

- ***To create a sense of openness in rear yards.***

Comment

The proposed lots will maintain a rear yard with future opportunities for soft landscaping and plantings, which will contribute to a sense of openness.

- ***To preserve the amenity of adjacent land, particularly relating to privacy between buildings.***

Comment

It is considered that the new dwelling provides adequate spatial separation between adjoining buildings. The application has demonstrated that the proposal will not have an unreasonable impact with regards to solar access. The adjoining properties will maintain solar access in accordance with the DCP requirements. Privacy has been addressed within Section D8 of this report. Subject to recommended conditions, it is considered no unreasonable privacy impacts would occur as a result of the development.

- ***To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.***

Comment

The subdivision pattern is similar to that of the existing building patterns within the immediate vicinity. The new dwelling will have a similar rear setback to surrounding development and the existing dwelling on proposed Lot 2. The proposal seeks to demolish an existing outbuilding and shed and will construct the proposed garage in a similar location. Therefore, the proposal will maintain the existing visual continuity and pattern of buildings, rear gardens and landscaped elements, notwithstanding the numeric non-compliance with the rear setback provision

- ***To provide opportunities to maintain privacy between dwellings.***

Comment

Privacy has been addressed within Section D8 of this report. Subject to recommended conditions, it is considered no unreasonable privacy impacts would occur as a result of the development. The non-compliant elements will not contribute to unreasonable privacy impacts to adjoining neighbours.

Having regard to the above assessment, it is concluded that the outcomes of the control have been achieved. Therefore, the application is supported on merit in this particular circumstance.

C1 Subdivision

Component	Requirement	Proposed	Compliant
Lot requirements	R2 Low Density Residential zone requirements: Proposed new allotments: a) Minimum width: 13 metres b) Minimum depth: 27 metres; and c) Minimum building area: 150m ²	<u>Lot 1</u> a) Width: 13 metres b) Depth: 30.5 metres; and c) Building area: >150m ² <u>Lot 2</u> a) Width: 16.6 metres b) Depth: 30.5 metres; and c) Building area: >150m ²	Yes
Access	Motor vehicle access to each residential allotment is required from a constructed and dedicated public road. Where access is proposed to a section of unconstructed public road, then the subdivision will need to provide legal, constructed access to the Council's satisfaction. Access for Council service vehicles, emergency vehicles	Access to the proposed allotments is proposed from an existing 4.57m wide right-of-carriageway (ROW) over Lot C DP410667 (No.17 Alfred Street). Owners consent has been provided from the owners of No.17 Alfred Street for the upgrade works and increased use of this ROW. Passing bays are proposed in accordance with this control.As discussed throughout this report,	Yes

and garbage collection vehicles must be provided.

Driveways, accessways, etc, to allotments should have a gradient not exceeding 1:4 and allow for transitions at a minimum length of 1.5m and at a grade no steeper than 1:10.

Driveways in excess of 200 metres will not be allowed for residential development.

Driveways that are 30m or more in length require a passing bay to be provided every 30m. To provide a passing bay, driveways shall be widened to 5.0m for a distance of at least 10m.

Passing bays should have regard to sight conditions and minimise vehicular conflict.

Vehicular ingress/egress points to internal lots may be used as passing/turning bays, subject to extension of a right-of-carriageway over the passing/turning bay.

Rights-of-carriageway should be located so as to accommodate all vehicle turning facilities.

Width of accessways are to be as follows:

Number of lots to be serviced	Width of clear constructed accessway (m)
1 - 5	3.5
6 - 10	5.0
in excess of 10	Access is to be provided by a private or public road constructed with a width that is in accordance with Council standard

these passing bays will be limited to 5.0m to ensure access potential access is maintained on the ROW burdening the subject site.

The proposal has been reviewed by Council's Development Engineer and Traffic Engineer who raises no objections, subject to recommended conditions.

	<table><tr><td></td><td>specifications for engineering works (AUSPEC 1)</td></tr><tr><td colspan="2">Provision of services in rights of carriageway are as follows:</td></tr><tr><td>Number of lots to be serviced</td><td>Additional width to be provided in Right of Carriageway (m)</td></tr><tr><td>Up to 3 lots</td><td>0.5</td></tr><tr><td>4 or more lots</td><td>1.0</td></tr></table>		specifications for engineering works (AUSPEC 1)	Provision of services in rights of carriageway are as follows:		Number of lots to be serviced	Additional width to be provided in Right of Carriageway (m)	Up to 3 lots	0.5	4 or more lots	1.0		
	specifications for engineering works (AUSPEC 1)												
Provision of services in rights of carriageway are as follows:													
Number of lots to be serviced	Additional width to be provided in Right of Carriageway (m)												
Up to 3 lots	0.5												
4 or more lots	1.0												
Design and construction	<p>All roads, rights of carriageway, drainage design and construction is to be in accordance with Council's policy requirements including; AUSPEC 1 - Council's Specification for Engineering Works, Development Engineering Minor Works Specification, On Site Stormwater Detention (OSD) Technical Specification and Council's Water Sensitive Urban Design Policy. Additionally, internal roads must be designed in accordance with the relevant Australian Standards.</p> <p>Subdivision design needs to maximise and protect solar access for each dwelling by considering factors such as orientation, shape, size and lot width.</p>	<p>The proposal has been reviewed by Council's Development Engineer who raises no objections, subject to recommended conditions. This includes a Deferred Commencement condition for a interallotment drainage system as detailed below.</p>	<p>Yes (subject to conditions)</p>										

Drainage	Provision should be made for each allotment to be drained by gravity to a Council-approved drainage system. The topography of the land should not be altered to adversely affect the natural drainage patterns. Stormwater should drain directly to a Council-approved drainage system and not via adjoining properties unless via a formalised interallotment drainage system. The proposed allotments are to be drained to the direction of the natural fall of the land. Interallotment drainage easements will be required through adjoining properties to adequately drain land to Council's downstream system.	Stormwater from the proposed allotments are proposed to be managed through a drainage easement to Binba Place through the adjoining property to the south (5 Binba Place). Council's Development Engineer has supported this in principle, subject to a Deferred Commencement condition requiring the easement to be legally created. The subject consent will not become operational until this easement is appropriately negotiated and formed with relevant parties/neighbours.	Yes (subject to conditions)
Restrictions	Any easement, right-of-carriageway, or other restriction that is placed on the title of any land as a requirement of the approval of the subdivision is to be protected by a positive covenant or like instrument with the Council nominated as a party.	Acceptable, subject to appropriate conditions, should the proposal be supported.	Yes
Environmentally constrained land	In areas subject to constraints such as flooding, tidal inundation, threatened species, landslip risk, bushfire or any other matter, adequate safe area for building, where the risk from hazard is minimised, is to be provided within an allotment. Where possible, lot boundaries should utilise natural land features such as creeks, escarpments and rock outcrops.	Complies.	Yes
Bushfire	Subdivision should be designed to minimise the risk from potential bushfire. Asset protection zones should be contained within the property boundaries of the new subdivision.	The site is not located within bushfire prone land.	Yes

C4 Stormwater

Stormwater from the proposed allotments are proposed to be managed through a drainage easement to Binba Place through the adjoining property to the south (5 Binba Place). Council's Development Engineer has supported this in principle, subject to a Deferred Commencement condition requiring the easement to be legally created. The subject consent will not become operational until this easement is appropriately negotiated and formed with relevant parties/neighbours. Operational conditions will then apply to the construction and ongoing management of this system.

The deferred commencement condition will also require additional information /amendments to the stormwater drainage to require on site stormwater detention (OSD) for proposed Lot 2.

Subject to consistency with the deferred commencement and operational conditions, the proposed development will achieve consistency with the objectives of this control. Please refer to Council's Development Engineer and Water Management Referral for more information.

D7 Views

No unreasonable view loss is anticipated and no submissions with regards to view loss has been received by adjoining neighbours.

D8 Privacy

Merit Assessment

Clause D8 of the WDCP 2011 requires the building layout to be designed to optimise privacy for occupants of the development and occupants of adjoining properties. The Control stipulates that windows of a dwelling are to be located so they do not provide direct or close views (ie. from less than 9 metres away) into the windows or private open space of other dwellings.

No submissions in relation to privacy have been received from adjoining neighbours. Nevertheless, consideration of potential privacy is provided below.

The proposed upper floor window (ASW 1218) to the "sitting room" on the western elevation would result in a spatial separation of less than 9m between the adjoining dwellings' (No.13 Alfred Road) private open space. The elevated floor level of this room may result in potential privacy impacts. In this respect, it is considered appropriate to impose a condition of consent requiring this window to install privacy screens of horizontal louvre style construction (with a maximum spacing of 20mm), or be either high sill (ie. containing a sill height of 1.65m from the FFL) or obscure glazed.

The proposed upper floor windows to the "Master Bed" (ASW 1614 and ASW 1612) on the eastern elevation would result in a spatial separation of less than 9m between the proposed dwelling on future Lot 1 and the existing dwelling on future Lot 2. In this respect, it is considered appropriate to impose a condition of consent requiring these windows to install privacy screens of horizontal louvre style construction (with a maximum spacing of 20mm), or be either high sill (ie. containing a sill height of 1.65m from the FFL) or obscure glazed.

It is considered that the other proposed windows within the development have been appropriately designed using high sill windows, offset positioning and obscure glazing to ensure the privacy of the adjoining neighbours. Existing and proposed boundary fencing and landscaping will also assist in mitigating potential privacy impacts.

Subject to recommended conditions, the privacy impacts are considered to be reasonable within a

residential environment

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$8,011 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$801,075.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of Clause 4.1 Minimum Subdivision Lot Size has adequately

addressed and demonstrated that:

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
- b) There are sufficient environmental planning grounds to justify the contravention.

2) The proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

PLANNING CONCLUSION

This proposal, for the subdivision of one (1) lot into two (2) and the construction of a new dwelling, has been referred to the Northern Beaches Local Planning Panel (NBLPP) as development involves a variation to the minimum lot size development standard of more than 10%.

The application is supported by a Clause 4.6 Variation Request which argues that the variation to minimum lot size is justified given the size, configuration and patterns of lots in the surrounding area. It also argues that the future form and scale of the lots and proposed dwellings will be consistent with the established character of the local neighbourhood. It is considered that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard in this instance.

During the assessment of the application, amended plans and additional information was submitted which deleted the proposed secondary dwelling, amended the proposed stormwater design and provided owners consent from No.17 Alfred Road for upgrade works and continued use of the Right of Carriageway located on their land.

A total of two (2) submissions were received in response to the notification of the application. One submission raised concerns that the proposal seeks to access the proposed allotments over adjoining land and that no consent was granted for use of this driveway or associated upgrades to facilitate the proposal. The second submission raised concern that the proposed passing bay would impact an existing Right of Carriageway which burdens the subject site. Overall, as detailed throughout this report, it is considered that these matters have been addressed by amended plans, additional information and resolved by way of conditions, and as such, do not warrant refusal of the application in this instance. Specifically, conditions of consent are to be imposed requiring "Passing Bay 1", to be reduced in width by 0.5m. This will enable an unimpeded width of 3.2m to be retained within this Right of Carriageway easement. It is considered that the retention of a unimpeded width of 3.2m is sufficient to facilitate vehicle access in the future (if required) and will retain the purpose of this Right of Carriageway easement.

Stormwater from the proposed allotments is proposed to be managed through a drainage easement to Binba Place through the adjoining property to the south (5 Binba Place). Council's Development Engineer has supported this in principle, subject to a Deferred Commencement condition requiring the easement to be legally created. The subject consent will not become operational until this easement is appropriately negotiated and formed with relevant parties/neighbours. Operational conditions will then apply to the construction and ongoing management of this system.

Potential amenity issues to surrounding neighbours have been reviewed and have been determined to be reasonable having regard to the context and spatial relationships. Additional privacy measures have been conditioned within the consent.

Overall and on balance, it is considered that the proposal (as amended) is a suitable and appropriate development for the subject site, for the reasons outlined in this report. When assessed on its merits, the proposed subdivision arrangement is found to be acceptable and consistent with the existing subdivision pattern in the surrounding area.

Accordingly, the application is recommended for deferred commencement approval (subject to conditions).

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant a Deferred Commencement Development Consent being subject to a two (2) year time frame for Deferred Commencement Consents detailed within Clause 76 of the Environmental Planning and Assessment Regulation 2021 to DA2022/1693 for Demolition works, subdivision of one lot into two lots and construction of a dwelling house on land at Lot 3 DP 522694, 15 Alfred Road, BROOKVALE, subject to the conditions printed below:

Once the matters detailed within the Deferred Commencement Development Consent conditions are satisfactorily addressed then an operational development consent be issued subject to the time frames detailed within this recommendation.

Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

DEFERRED COMMENCEMENT CONDITIONS

1. Stormwater Drainage Easement

As the natural fall of the land is towards the rear of the site the disposal of stormwater drainage is to be in accordance with the drainage plan submitted by VNK consulting DRW 080822-01 /02 . The easement is to be created under Sections 88B and/or 88K of the Conveyancing Act 1919. The applicant must provide Council with evidence of a created easement on title to activate the consent .

Stormwater drainage plans are to be submitted to Council for written approval detailing disposal of stormwater from the site in accordance with Council's Water Management Policy. The following additional information /amendments to the stormwater drainage are also required;

- 1) On site stormwater detention (OSD) is also to be provided for proposed Lot no 2 . The discharge rates for the OSD system are to be less than the predeveloped state of nature flows up to the 20/100 AEP event for all storms up to the 1/100AEP.
- 2) The DRAINS model and the II-CL Hydrological model and rainfall data is to be checked to see it relates to the Alfred street catchment.

Reason: To ensure adequate provision is made for stormwater drainage from the site in a

proper manner that protects adjoining properties.

Evidence required to satisfy the deferred commencement condition/s must be submitted to Council within two (2) years of the date of this consent, or the consent will lapse in accordance with Clause 76 of the Environmental Planning and Assessment Regulation 2021. This evidence is to be submitted along with a completed 'Deferred Commencement Document Review Form' (available on Council's website) and the application fee, as per Council's Schedule of Fees and Charges.

Upon satisfaction of the deferred commencement condition/s, the following conditions apply:

GENERAL CONDITIONS

2. Approved Plans and Supporting Documentation

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
13221CSubdivision	1	Survey Plan Showing Proposed Subdivision	C.M.S Surveyors Pty Ltd	15/09/2021
Sheet 03	U	Existing/Demolition Plan	Accurate Design and Drafting	28/06/2023
Sheet 04	U	Subdivision & Proposed Site Plan	Accurate Design and Drafting	28/06/2023
Sheet 07	U	Ground Floor Plan	Accurate Design and Drafting	28/06/2023
Sheet 08	U	Upper Floor Plan	Accurate Design and Drafting	28/06/2023
Sheet 09	U	Front & Rear Elevations	Accurate Design and Drafting	28/06/2023
Sheet 10	U	Side Elevations	Accurate Design and Drafting	28/06/2023
Sheet 11	U	Garage Plans	Accurate Design and Drafting	28/06/2023
Sheet 12	U	Section & Details	Accurate Design and Drafting	28/06/2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Preliminary Landslip Assessment (AWT64652)		AW Geotechnics Pty Ltd	03/11/2022
Site Classification Report (AWT 64652)	A	AW Geotechnics Pty Ltd	22/04/2022
Waste Management Plan		Icon Homes Pty Ltd	30/09/2022
BASIX Certificate (1381366S)		Abeaut Design Pty Ltd	21/03/2023
Arboricultural Impact Assessment		AURA Tree Services	05/04/2023

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

3. **Compliance with Other Department, Authority or Service Requirements**

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	24/11/2022

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

4. **Approved Land Use**

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a dwelling house

A dwelling house is defined as:

"dwelling house means a building containing only one dwelling."

(development is defined by the Warringah Local Environment Plan 2011 (as amended) Dictionary)

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent.

5. No Approval for Secondary Dwelling

No approval is granted or implied under this Development Consent for the use of any part of the dwelling house for the purpose of a secondary dwelling or separate occupancy. Built in cooking facilities are not permitted to be installed, other than those shown in the designated kitchen area.

Reason: To ensure compliance with the terms of this consent.

6. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifier for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the

- excavation, and
- (ii) where necessary, underpin the adjoining premises to prevent any such damage.
- (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

7. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and

construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools

- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

FEES / CHARGES / CONTRIBUTIONS

8. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$8,010.75 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$801,075.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

9. Security Bond

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one

inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifier prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.northernbeaches.nsw.gov.au).

Reason: To ensure adequate protection of Council's infrastructure.

10. **Road infrastructure damage bond**

The applicant is to lodge a bond with Council of \$20000 as security against any damage to Council's roadway, drainage and footpath infrastructure as a result of the subdivision works as part of this consent.

Details confirming payment of the bond are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

11. **Construction, Excavation and Associated Works Security Bond (Crossing / Kerb)**

The applicant is to lodge a Bond of \$10000 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter, any footpath works and removal of any redundant driveways required as part of this consent.

Details confirming payment of the bond are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

12. **Erosion and Sediment Control Plan**

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities)
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected.
- North point and scale.

Details demonstrating compliance are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

Reason: Protection of the receiving environment.

13. Car Parking Standards

The driveway/access ramp grades, access and car parking facilities must comply with the Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking. The dimensions of car parking bays and aisle widths in the driveway and garages are to comply with Australian/New Zealand Standard for Off-Street Parking AS/NZS 2890.1-2004.

to ensure compliance the following changes are required:

1. Passing bays 1 & 2 to be no less than 5.0m in width
2. Turning Bay 1 deleted

Details demonstrating compliance with this condition are to be submitted to the Principal Certifier prior to the issue of a construction certificate.

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

14. Amendments to the approved plans

The following amendments are to be made to the approved plans (including approved engineering plans and landscape plans):

a) **Passing Bay 1:** The proposed (westernmost) passing bay, identified on the approved plans as "Passing Bay 1", shall be reduced from 5.5m in width to 5.0m in width (in total). This passing bay shall have a minimum setback of 3.2m from the southern boundary (adjoining No.13 Alfred Road).

b) **Sitting Room Window (ASW 1218)** - A privacy screen is to be installed on the "Upper Floor" western window adjoining the "Sitting room" (ASW 1218) as shown on the approved plans. The privacy screen shall be of horizontal louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development. Alternatively, this window shall be fitted with obscured glazing or have a minimum sill height of 1.65m above the Finished Floor Level.

c) **Master Bed Windows (ASW 1614 and ASW 1612)** - Privacy screens are to be installed on the "Upper Floor" eastern windows adjoining the "Master Bed" (ASW 1614 and ASW 1612) as shown on the approved plans. The privacy screens shall be of horizontal louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development. Alternatively, these windows shall be fitted with obscured glazing or have a minimum sill height of 1.65m above the Finished Floor Level.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.

15. Boundary Identification Survey

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of any Construction Certificate.

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

16. Installation and Maintenance of Sediment Control

Prior to any works commencing on site, including demolition, an erosion and sediment control plan must be prepared by a suitably qualified person in accordance with the following documents and provided to the Principal Certifier:

1. Council's relevant development control plan,
2. The guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the Blue Book) (as amended from time to time), and
3. The 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust) (as amended from time to time).

Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To ensure no substance other than rainwater enters the stormwater system and waterways.

17. Vehicle Crossings Application

The Applicant is to submit an application for driveway levels with Council in accordance with Section 138 of the Roads Act 1993. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

18. Compliance with Standards

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards.

19. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

20. **Sydney Water "Tap In"**

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifier demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website www.sydneywater.com.au for:

- "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

Reason: To ensure compliance with the statutory requirements of Sydney Water.

21. **Construction Site Management Plan**

Before the issue of a construction certificate, the applicant must ensure a construction site management plan is prepared before it is provided to and approved by the certifier. The plan must include the following matters:

- location and materials for protective fencing and hoardings to the perimeter on the site
- provisions for public safety
- pedestrian and vehicular site access points and construction activity zones
- details of construction traffic management, including proposed truck movements to and from the site and estimated frequency of those movements, and measures to preserve pedestrian safety in the vicinity of the site
- details for maintaining access to adjacent properties and properties which benefit from the right of carriageway easement
- details regarding the proposed method of access to and egress from the site for construction vehicles, and demonstration these vehicle will manoeuvre the driveway and right of way safely – i.e enter and leave in a forward direction.
- protective measures for on-site tree preservation (including in accordance with AS 4970- 2009 Protection of trees on development sites and Council's DCP, if applicable) and trees in adjoining public domain (if applicable)
- details of any bulk earthworks to be carried out
- location of site storage areas and sheds
- equipment used to carry out all works
- a garbage container with a tight-fitting lid
- dust, noise and vibration control measures
- location of temporary toilets.

The applicant must ensure a copy of the approved construction site management plan is kept on-site at all times during construction.

Reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.

BEFORE ISSUE OF A SUBDIVISION WORKS CERTIFICATE

22. Subdivision Works Certificate

A Subdivision Works Certificate is to be approved by Certifier for the provision of engineering works.

Engineering plans for the subdivision works within this development consent are to be submitted to the Certifier for approval under Section 6.13 of the Environmental Planning and Assessment Act 1979.

Civil Engineering plans for the subdivision works are to be designed in accordance with the Council's specification for engineering works – AUS-SPEC #1. The plans shall be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or RPENG (Professionals Australia) and registered in the General Area of Practice for civil engineering. The design must include the following information:

1. A stormwater management plan generally in accordance with the approved Development Application stormwater drainage plans .
2. Engineering plans detailing driveway access /passing bays and turning areas generally in accordance with the plans prepared by NB Consulting Engineers. Drawing nos 17144 C04E,C10D,C11E'C13B,C14C.C15D,C16E and C17B dated 7/6/23 and required amendments to reduce the width of "Passing Bay 1" as stipulated within condition 14 of this consent.

The Subdivision Works Certificate must be supported by engineering plans, calculations, specification or any certification relied upon.

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specifications.

23. Pre-Commencement Dilapidation Report

The applicant must prepare and submit a pre-commencement dilapidation report providing an accurate record of the existing condition of adjoining public property and public infrastructure (including roads, gutter, footpaths, etc). A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties.

The pre-construction / demolition dilapidation report must be submitted to Council for written approval and the written approval is then to be submitted to the Certifier prior to the issue of the any Subdivision Works Certificate and the commencement of any works including demolition.

Reason: Protection of Council's Infrastructure during construction.

24. Structural Adequacy and Excavation Work

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural

Engineer, except where site conditions permit the following:

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- (b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Subdivision Works Certificate.

Reason: To provide public and private safety.

25. Construction Site Management Plan

Before the issue of a Subdivision Works Certificate, the applicant must ensure a construction site management plan is prepared before it is provided to and approved by the certifier. The plan must include the following matters:

- location and materials for protective fencing and hoardings to the perimeter on the site
- provisions for public safety
- pedestrian and vehicular site access points and construction activity zones
- details of construction traffic management, including proposed truck movements to and from the site and estimated frequency of those movements, and measures to preserve pedestrian safety in the vicinity of the site
- details for maintaining access to adjacent properties and properties which benefit from the right of carriageway easement
- details regarding the proposed method of access to and egress from the site for construction vehicles, and demonstration these vehicle will manoeuvre the driveway and right of way safely – i.e enter and leave in a forward direction.
- protective measures for on-site tree preservation (including in accordance with AS 4970-2009 Protection of trees on development sites and Council's DCP, if applicable) and trees in adjoining public domain (if applicable)
- details of any bulk earthworks to be carried out
- location of site storage areas and sheds
- equipment used to carry out all works
- a garbage container with a tight-fitting lid
- dust, noise and vibration control measures
- location of temporary toilets.

The applicant must ensure a copy of the approved construction site management plan is kept on-site at all times during construction.

Reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

26. Project Arborist

A Project Arborist, with minimum AQF Level 5 in arboriculture, shall be engaged to provide tree protection measures in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, and any recommendations in the Arboricultural Impact Assessment. The Project Arborist is to specify and oversee all tree protection measures such as tree protection fencing, trunk and branch protection and ground protection.

The Project Arborist is to supervise all demolition, excavation and construction works near all

trees to be retained including construction methods near the existing trees to protect tree roots, trunks, branches and canopy. Where required, manual excavation is to occur ensuring no tree root at or >25mm (Ø) is damaged by works unless approved by the Project Arborist.

Existing ground levels shall be maintained within the tree protection zone of trees to be retained unless authorised by the Project Arborist.

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment including:

- a) tree protection fencing for tree 1 - Melaleuca quinquenervia (tree 27 on Survey and Landscape Plan) as identified in section 4.8 Tree Protection Plan,
- b) any excavations within the tree protection zone of tree 1 - Melaleuca quinquenervia (tree 27 on Survey and Landscape Plan) as identified in section 4.8 Tree Protection Plan,
- c) any excavations within the tree protection zone of tree 6 - Eucalyptus citriodora (tree 42 in Survey and Landscape Plan) within adjoining property,
- d) any excavation for any construction works including utility services, within the tree protection zone of existing trees retained within the property and all existing trees and vegetation within adjoining properties shall be supervised by a Project Arborist when any tree roots at or >25mm (Ø) diameter is encountered.

All tree protection measures specified must:

- e) be in place before work commences on the site, and
- f) be maintained in good condition during the construction period, and
- g) remain in place for the duration of the construction works.

The Project Arborist shall provide certification to the Principal Certifier that all recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded including at commencement, during the works and at completion.

Note:

Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: Tree protection.

DURING BUILDING WORK

27. Tree and Vegetation Protection

- a) Existing trees and vegetation shall be retained and protected, including:
 - i) all trees within the site not approved for removal, including trees and vegetation nominated for retention on the approved Plans,
 - ii) all trees and vegetation located on adjoining properties,
 - iii) all trees and vegetation within the road reserve.
- b) Tree protection shall be undertaken as follows:
 - i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in

arboriculture,

- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
- ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

- c) The arboricultural works listed in a) and b) are undertaken and certified by an Arborist/Project Arborist as complaint to AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

28. **Installation and Maintenance of Sediment and Erosion Controls**

Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prior to commencement of any other works on site.

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment.

29. **Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- Work Health and Safety Act;

- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

30. Geotechnical Requirements

All recommendations (if any) included in the Geotechnical Report referenced in Condition 1 of this consent are required to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

31. Demolition Works - Asbestos

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifier, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

32. Survey Certificate

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

- (a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.
- (b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.
- (c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier.

Reason: To determine the height of buildings under construction comply with levels shown on

approved plans.

33. Vehicle Crossings

The Applicant is to construct a vehicle crossing 3.5m metres wide in accordance with Northern Beaches Council Drawing No A4-3330/ Normal and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

A copy of the vehicle crossing inspection form is to be submitted to the Certifier.

Reason: To facilitate suitable vehicular access to private property.

34. Waste Management During Development

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

Details demonstrating compliance must be submitted to the Principal Certifier.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

35. Adjoining Property Access

Construction vehicles and materials are not to impede access for surrounding the properties throughout the construction phase. The applicant must provide adjoining neighbours with contact details of the contractor in the event that access is blocked.

Reason: To ensure access is available to all property owners during the construction phase.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

36. Landscape Completion

Landscape works are to be implemented in accordance with the approved Landscape Plan No. 2311 prepared by pdla landscape architects, and inclusive of the following conditions:

- a) landscape works are to be contained within the legal property boundaries identified for each lot,
- b) existing vegetation shown for retention on the approved Landscape Plan shall be retained and protected,
- c) new tree planting and any other vegetation planting, as shown on the Landscape Plan, is not permitted within the right-of-way,
- d) new tree planting nominated on the Landscape Plan shall be located within Lot 1 and Lot 2 deep soil areas with one tree per lot to be planted,
- e) all tree planting shall be a minimum pre-ordered planting size of 75 litres or as otherwise scheduled if greater in size; generally selected from Northern Beaches Council's Native Plant Species Guide, or Council's Tree Guide; to achieve at least (insert) metres height at maturity; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
- f) mass planting shall be installed at minimum 1metre intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants

per metre square for groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch.

Prior to the issue of an Occupation Certificate, details (from a landscape architect, landscape designer or qualified horticulturalist) shall be submitted to the Principal Certifier, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

37. Condition of Retained Vegetation

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees required to be retained on the approved Plans or as listed in the Arboricultural Impact Assessment, including the following information:

- a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
- b) extent of damage sustained by vegetation as a result of the construction works,
- c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree and vegetation protection.

38. Stormwater Drainage Disposal Certification

Certification from an appropriately qualified and practising Civil Engineer demonstrating the stormwater drainage systems have been designed and installed in accordance with the requirements of Council's Water Management for Development Policy and where relevant a Geotechnical Engineer shall be provided to the Principal Certifier prior to the issue of an Occupation Certificate, and;

If any on site stormwater detention system is installed the Applicant shall lodge the Legal Documents Authorisation Application with Council.

The application is to include the completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification. A guide to the process and associated Legal Document Authorisation Application form can be found on Council's website. The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system within this development consent.

The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the authority to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for the on-site stormwater detention system is to be submitted.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure satisfactory management of stormwater.

39. Retaining wall

The retaining wall works shall be certified as compliant with all relevant Australian Standards and Codes by a Structural Engineer. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: Public and Private Safety

40. **Damage to the right of way**

Any damage to the right of way, caused by the construction of the development, is to be repaired prior to the issue of the occupation certificate.

Reason: To ensure the site is left in an acceptable state and that access is maintained for adjoining neighbours.

41. **Removal of All Temporary Structures/Material and Construction Rubbish**

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure bushland management.

42. **House / Building Number**

House/building number is to be affixed to the building to be readily visible from the public domain.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: Proper identification of buildings.

43. **Waste Management Confirmation**

Prior to the issue of an Occupation Certificate, evidence / documentation must be submitted to the Principal Certifier that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

44. **Sydney Water**

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure compliance with the statutory requirements of Sydney Water.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

45. **Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting. If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent.

The approved landscape area shall in perpetuity remain as planting under the development consent.

Reason: To maintain local environmental amenity.

46. **Maintenance of Stormwater Treatment Measures - Minor**

Stormwater treatment measures must be maintained at all times in accordance with manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

Reason: Protection of the receiving environment.

47. **Geotechnical Recommendations**

Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

48. **Maintenance of Easement Provisions**

This consent does not override any legal agreement or provisions associated with the Right of Carriageway Easement associated with the subject site.

Reason: To ensure compliance with the imposed legal agreements

49. **Use of Turning Bays and Passing Bays**

The turning bays and passing bays are not to be used as off street car parking spaces and are to unobstructed at all times.

Reason: To ensure safe vehicle access.

BEFORE ISSUE OF A SUBDIVISION CERTIFICATE

50. **Certification of Civil Works and Works as Executed Data on Council Land**

The Applicant shall submit a suitably qualified Civil Engineer's certification that the completed works have been constructed in accordance with this consent and the approved Section 138 and/or Subdivision Work Certificate plans. Works as Executed data certified by a registered surveyor in relation to boundaries and/or relevant easements, prepared in accordance with Council's 'Guideline for preparing Works as Executed data for Council Assets' in an approved format shall be submitted to the Principal Certifier for approval prior to the issue of the Subdivision Certificate.

Reason: To ensure compliance of works with Council's specification for engineering works.

51. **Demolition of Existing Building**

The existing building on the subject identified as "Rendered Building Metal Roof" and associated decking and paving shall be wholly demolished and removed prior to the issue of the Subdivision Certificate, in accordance with the approved Demolition Plan.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Subdivision Certificate.

Reason: To ensure compliance with the terms of this consent.

52. **Positive Covenant for On-site Stormwater Detention**

A positive covenant (under the provisions of Section 88B of the Conveyancing Act 1919) is to be created on the final plan of subdivision and accompanying 88B instrument, requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's standard requirements, which are available from Northern Beaches Council. Northern Beaches Council shall be nominated as the sole authority empowered to release, vary or modify such covenant.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Subdivision Certificate

Reason: To ensure ongoing maintenance of the on-site detention system.

53. **Provision of Services for Subdivision**

The applicant is to ensure all services including water, electricity, telephone and gas are provided, located and certified by a registered surveyor on a copy of the final plan of subdivision.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Subdivision Certificate.

Reason: To ensure that utility services have been provided to the newly created lots.

54. **Right of Carriageway**

The Applicant shall create a right of carriageway (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision and accompanying 88B instrument, to include all vehicular access and manoeuvring areas.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Subdivision Certificate.

Reason: Council's subdivision standards and the statutory requirements of the Conveyancing

Act 1919.

55. **Restriction as to User (On-site Stormwater Detention)**

The Applicant shall create a restriction as to user (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision and accompanying 88B instrument for the on-site stormwater detention system, restricting any alteration or additions to the system. The terms of such restriction are to be prepared to Council's standard requirements. Council shall be nominated as the party to release, vary or modify such restriction.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Subdivision Certificate.

Reason: To ensure no modification to the on-site stormwater detention structure without Council's approval.

56. **Services**

The Applicant shall ensure all utilities/services and street lighting is installed. The Applicant is to submit a Certification stating the above requirement has been complied with by the relevant authority(s) and/or authorised contractor.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Subdivision Certificate.

Reason: To ensure services have been provided in accordance with the relevant authorities requirements.

57. **Certification of On-site Detention System (New Subdivision)**

A Certificate is to be submitted by a qualified experienced practicing Civil Engineer with corporate membership of the Institute of Engineers Australia (M.I.E), or who is eligible to become a Corporate member and has appropriate experience and competence in the related field confirming to the satisfaction of the Principal Certifier that the on-site stormwater detention has been constructed in accordance with the plans nominated on the Development Consent and relevant conditions of Development Consent. The Subdivision Certificate will not be released until this certification has been submitted and the Principal Certifier has confirmed that this condition has been satisfied.

Reason: To ensure the On-site Detention System has been built to the appropriate standard

58. **Sydney Water Compliance Certification**

The Applicant shall submit a Section 73 Compliance Certificate under the Sydney Water Act 1994 issued by Sydney Water Corporation. Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and fees to be paid. Please make early contact with the coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Subdivision Certificate.

Reason: To ensure compliance with the statutory requirements of Sydney Water.

59. **Easement for Drainage**

The Applicant shall create an easement for drainage (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision, to accompany the Section 88B instrument to ensure all drainage infrastructure is located within the appropriate easement(s).

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Subdivision Certificate.

Reason: Council's Subdivision standards and statutory requirements of the Conveyancing Act 1919.

60. **Easement for Services**

The Applicant shall create an easement for services (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision, to accompany the Section 88B instrument to ensure all utility services are located within the appropriate easement(s).

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Subdivision Certificate.

Reason: Council's Subdivision standards and statutory requirements of the Conveyancing Act 1919.

61. **Release of Subdivision Certificate**

The final plan of subdivision will not be issued by Council until the development has been completed in accordance with terms and conditions of the development consent.

Reason: Council's subdivision standards and the statutory requirements of the Conveyancing Act 1919.

62. **Subdivision Certificate Application**

The Applicant shall submit a Subdivision Certificate Application to Council, which is to include a completed Subdivision Certificate form and checklist, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919, four copies of the final plan of subdivision and all relevant documents including electronic copies. This documentation is to be submitted to Council prior to the issue of the Subdivision Certificate. All plans of survey are to show connections to at least two Survey Co-ordination Permanent Marks. The fee payable is to be in accordance with Council's fees and charges.

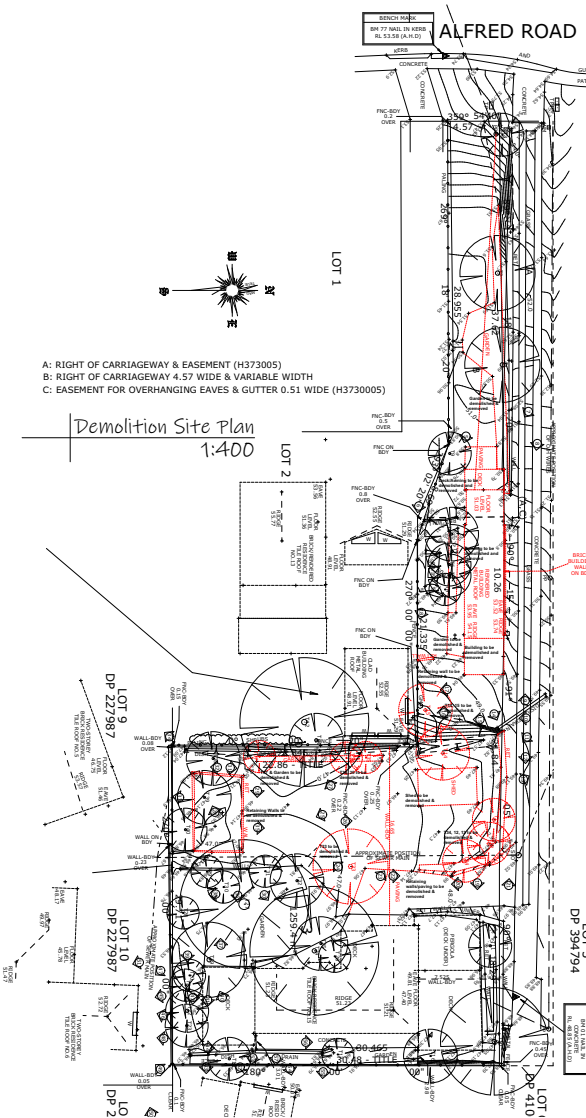
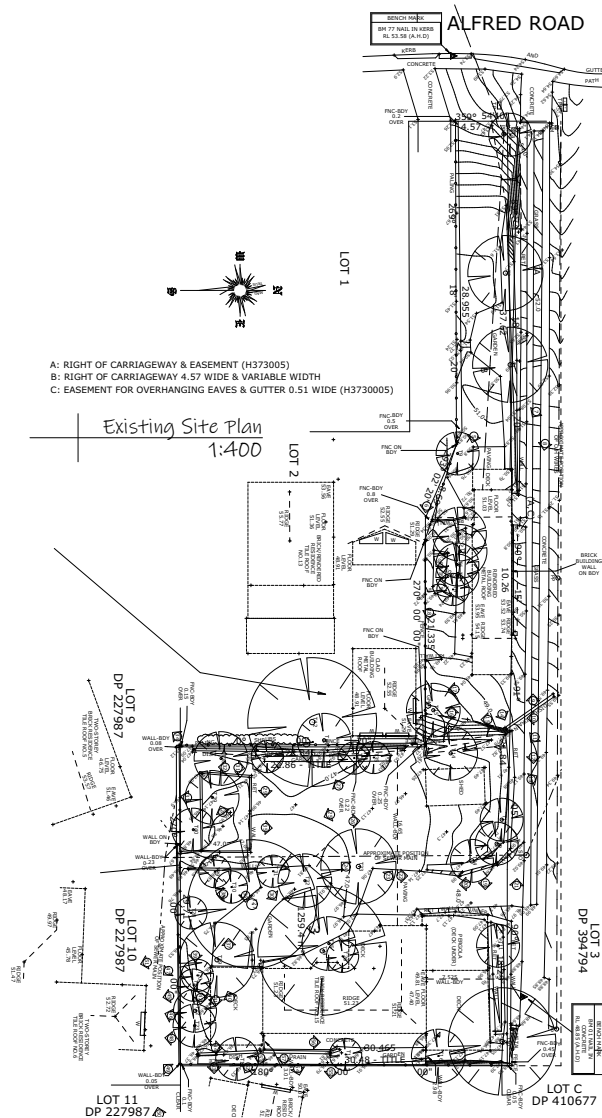
Reason: Statutory requirement of the Conveyancing Act 1919.

63. **Title Encumbrances**

The Applicant shall ensure all easements, rights of carriageway, positive covenants and restrictions as to user as detailed on the plans and required by the development consent are to be created on the title naming Council as the sole authority empowered to release or modify.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Subdivision Certificate.

Reason: To ensure proper management of land.



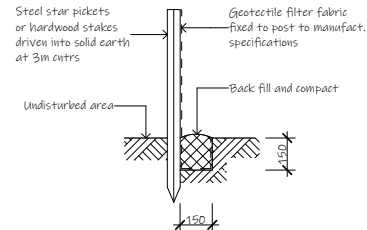
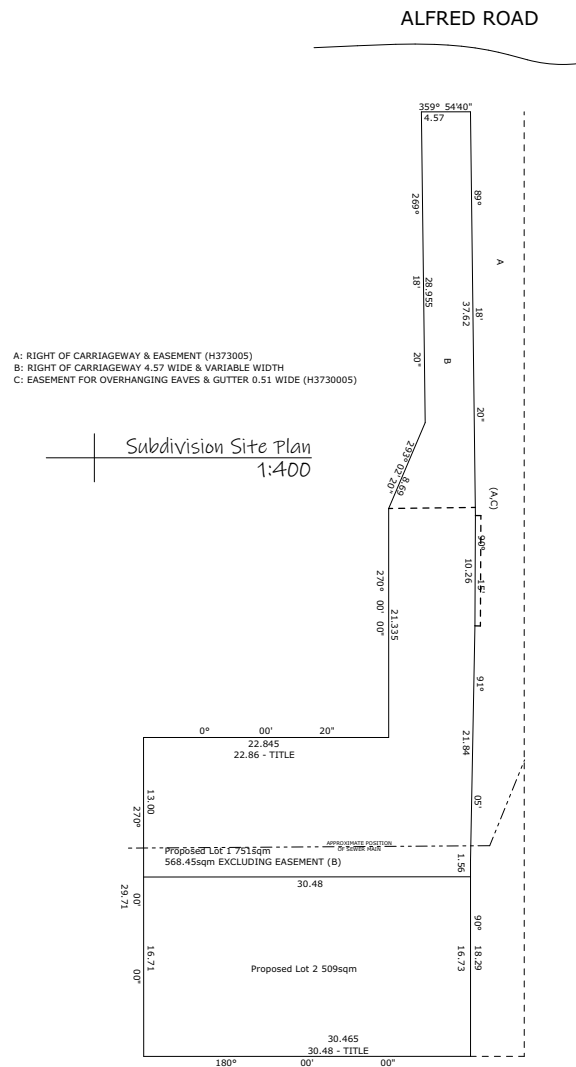
ISSUE: **U** DRAWING: 21006-20 DATE: 28-06-23 LOT: 3
SHEET: 3/17 PAPER: A3 DP: 522694

note: all works to be carried out in conjunction with the construction notes on sheet 2

Proposed Dwelling
#15 Alfred Road, Brookvale
Icon Job Number: J/0860

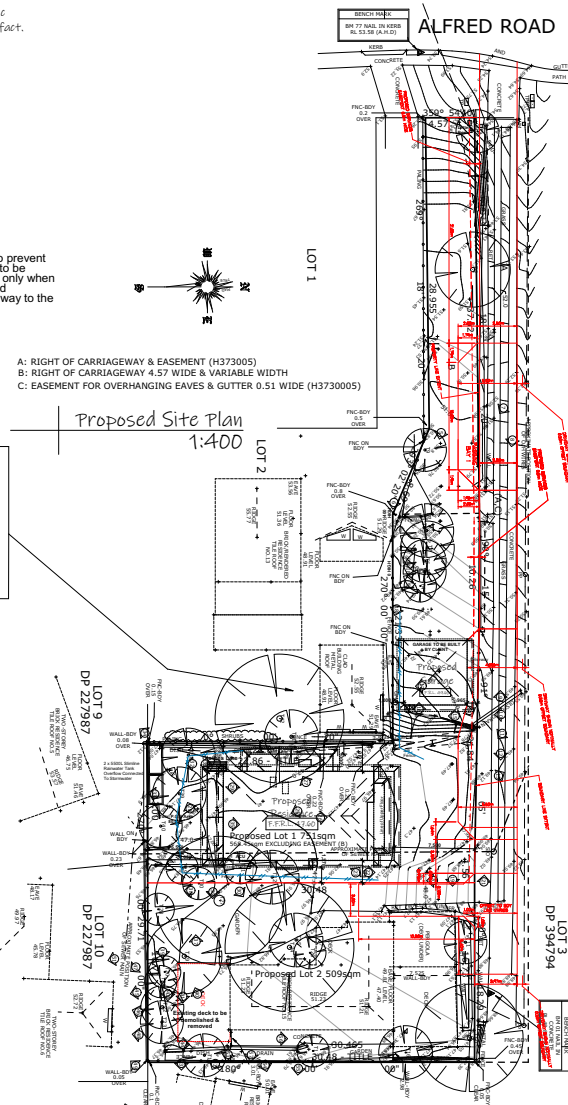
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Soil Erosion and Sediment Control Fence
1. Siltation fencing is to be placed as shown on the site plan as so to prevent silt run off to any adjoining property or to the street. This measure is to be placed prior to any excavation work beginning and is to be removed only when the sites surface has been stabilized, i.e. paved, landscaped or turfed
2. 40mm crushed rock aggregate is to be placed as an access driveway to the site and must be maintained throughout the course of construction.

Typical Silt Fence 1:20



ISSUE: **U** DRAWING: 21006-20 DATE: 28-06-23 LOT: 3
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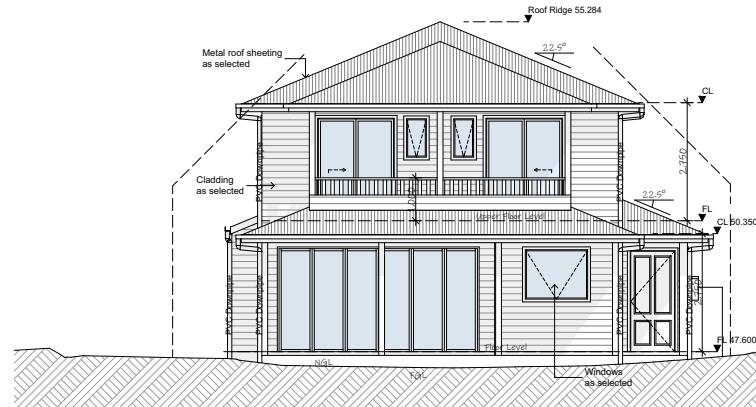
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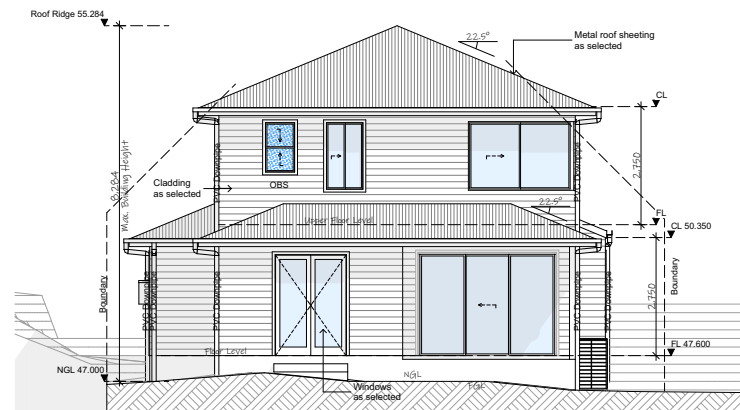
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Legend:
ACU - Air Conditioning Unit
AJ - Articulation Joint
CL - Ceiling Level
FGL - Finish Ground Line
FL - Floor Level
HWS - Hot Water System
NGL - Natural Ground Line
OBS - Obscure
DP - Downpipe
RW - Retaining Wall



Front/North Elevation
1:100



Rear/South Elevation
1:100

ISSUE: **U** DRAWING: 21006-20 DATE: 28-06-23 LOT: 3
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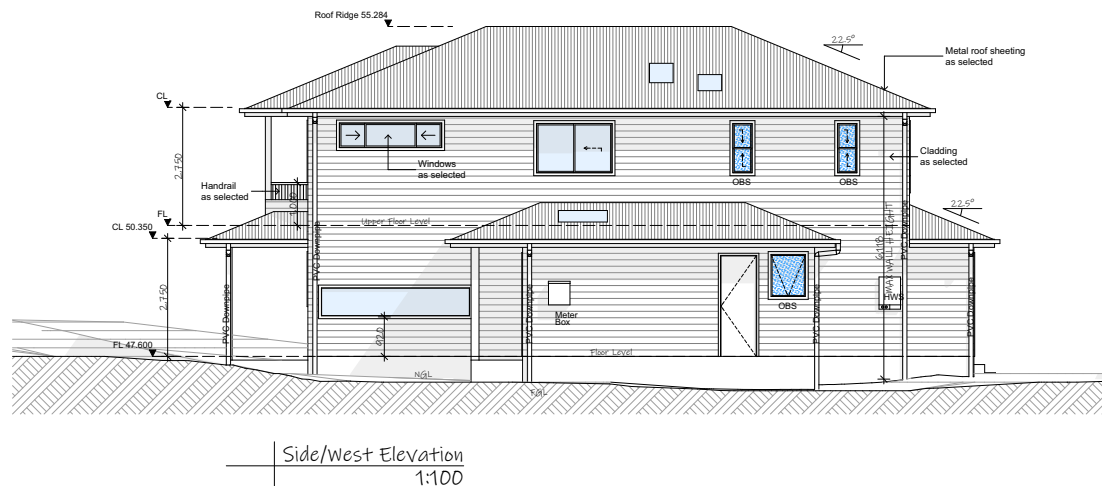
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Legend:
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ISSUE: **U** DRAWING: 21006-20 DATE: 28-06-23 LOT: 3
SHEET: 10/17 PAPER: A3 DP: 522694

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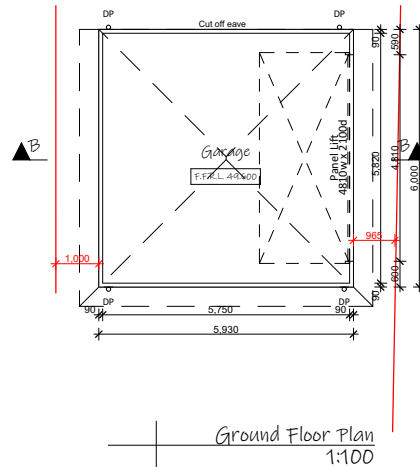
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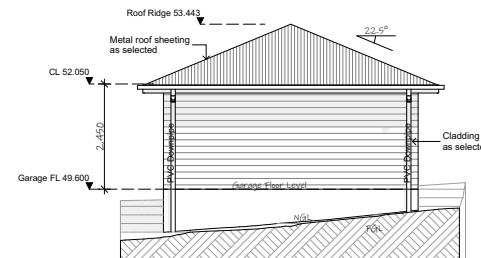
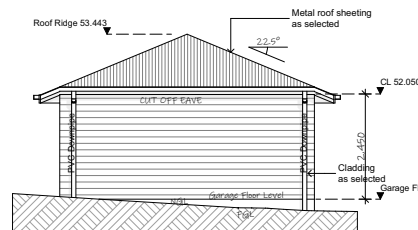
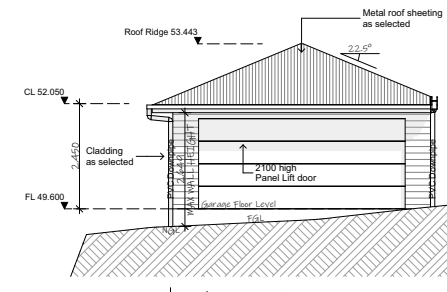
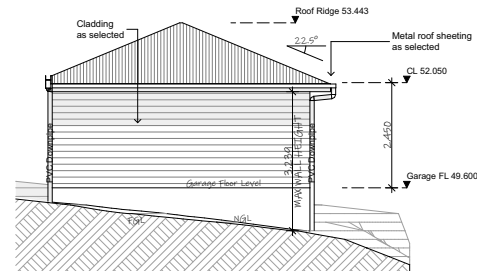


Legend:

ACU - Air Conditioning Unit	OBS - Obscure
AJ - Articulation Joint	OH - Over Head Cupboard
B/Bar - Breakfast Bar	P - Pantry
DP - Downpipe	R - Robe
DW - Dishwasher	RHS - Rolled Hollow Steel
Ens - Ensuite	S - Smoke Alarm
FIP - Fire Place	Sh - Shower
FW - Floor Waste	TR - Towel Rail
HWS - Hot Water System	Van - Vanity
L - Linen	w.l. - Walk in Linen
LC - Laundry Chute	w.i.r. - Walk in Robe
LOH - Lift off Hinge	w.i.p. - Walk in Pantry
LT - Laundry Tub	w.c. - Wash Closet
MH - Manhole	WM - Washing Machine
MW - Microwave Oven	



Floor Area (m ²)	
Entry Porch	1.93
Front Balcony	6.03
Porch	6.03
Verandah	19.02
Garage	35.58
Upper Floor	113.39
Lower Living	132.78
	314.76 m ²



ISSUE: DRAWING: DATE: LOT:
U 21006-20 28-06-23 3
SHEET: PAPER: DP:
11/17 A3 522694

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Appendix One – Clause 4.6 Exceptions to Development Standards**15 Alfred Road, Brookvale****Clause 4.1 – Minimum Lot Size**

Clause 4.6 of the Warringah Local Environmental Plan 2011 (WLEP 2011) permits departures from development standards in certain circumstances. In this case, it is necessary to consider if compliance with the development standard is consistent with the aims of the policy and, in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in section 1.3 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* being:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The aims and objectives of Warringah LEP 2011 Clause 4.6 are as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Under Clause 4.6(3) and (4) of the WLEP 2011, consent for a development that contravenes a development standard must not be granted unless the consent authority is satisfied that:

- (3)(a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (3)(b) there are sufficient environmental planning grounds to justify contravening the development standard.*

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(4)(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out,

These matters, along with case law judgements from the NSW Land and Environment Court, are addressed below.

It is of interest that the consent authority specifies a number of development standards that cannot be varied under Clause 4.6, listed in Clause 4.6(8). Clause 4.1 – Minimum Lot Size, is not one of the standards excluded, it must therefore be assumed that the standard for minimum lot size, is one of the development standards that can have an appropriate degree of flexibility applied under clause 4.6.

1. Environmental Planning Instrument Details (Warringah LEP 2011)

1.1 What is the name of the environmental planning instrument that applies to the land?

Warringah Local Environmental Plan 2011 (WLEP 2011)

1.2 What is the zoning of the land?

R2 – Low Density Residential

1.3 What are the objectives of the zone?

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provides facilities or services to meet the day to day needs of residents.*
- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

1.4 What is the development standard being varied?

CI 4.1 of the Warringah Local Environmental Plan 2011, Minimum subdivision lot size.

1.5 Under what clause is the development standard listed in the environmental planning instrument?

CI 4.1 of the Warringah Local Environmental Plan 2011

1.6 What are the objectives of the development standard?

(1) The objectives of this clause are as follows:

(a) to protect residential character by providing for the subdivision of land that results in lots that are consistent with the pattern, size and configuration of existing lots in the locality,

(b) to promote a subdivision pattern that results in lots that are suitable for commercial and industrial development,



- (c) to protect the integrity of land holding patterns in rural localities against fragmentation,*
- (d) to achieve low intensity of land use in localities of environmental significance,*
- (e) to provide for appropriate bush fire protection measures on land that has an interface to bushland,*
- (f) to protect and enhance existing remnant bushland,*
- (g) to retain and protect existing significant natural landscape features,*
- (h) to manage biodiversity,*
- (i) to provide for appropriate stormwater management and sewer infrastructure.*

1.7 What is the numeric value of the development standard in the environmental planning instrument?

The numeric value of the minimum subdivision lot size of buildings development standard applicable to the subject site is a minimum of 600m².

1.8 What is proposed numeric value of the development standard in your development application?

The numeric value of the development in this development standard is a minimum of 509m².

1.9 What is the percentage variation (between your proposal and the environmental planning instrument)?

The percentage variation sought is:

Lot 2: 16.4%



2. NSW Land and Environment Court Case Law

Several key Land and Environment Court (NSW LEC) judgements have refined the manner in which variations to development standards are required to be approached. The key findings and direction of each of these matters are outlined in the following discussion.

2.1 *Wehbe v Pittwater* [2007] NSW LEC 827

The decision of Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827, (expanded on the findings in *Winten v North Sydney Council*), identified 5 ways in which the applicant might establish that compliance with a development standard is unreasonable or unnecessary. It was not suggested that the five ways were the only ways that a development standard could be shown to be unreasonable or unnecessary.

The five ways outlined in *Wehbe* include:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way).*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).*

In the *Micaul* decision Preston CJ confirmed that the requirements mandated by SEPP 1 (as discussed in *Wehbe*) are only relevant in demonstrating that compliance with a development standard is unreasonable or unnecessary for the purpose of Clause 4.6(3)(a).

2.2 *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC

In the matter of *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC, initially heard by Commissioner Pearson, upheld on appeal by Justice Pain, it was found that an application under Clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe v Pittwater* [2007] NSW LEC 827 and demonstrate the following:

1. Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;
2. That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);



3. That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs;
4. All three elements of clause 4.6 have to be met and it is best to have different reasons for each but it is not essential.

Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7

In *Randwick City Council v Micaul Holdings*, the Court allowed a departure from development standards, provided the processes required by clause 4.6 are followed, a consent authority has a broad discretion as to whether to allow a departure from development standards under clause 4.6, even where the variation is not justified for site or development specific reasons.

Preston CJ noted that *the Commissioner did not have to be satisfied directly that compliance with each development standard was unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the appellant's written request had adequately addressed the matter in clause 4.6(3)(a) that compliance with each development standard was unreasonable or unnecessary.*

Zhang v City of Ryde

Commissioner Brown reiterated that clause 4.6 imposes three preconditions which must be satisfied before the application could be approved:

1. *The consent authority must be satisfied that the proposed development will be consistent with the objectives of the zone;*
2. The consent authority must be satisfied that the proposed development will be consistent with the objects of the standard which is not met; and
3. The consent authority must be satisfied that the written request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify contravening the development standard.

It is only if all of these conditions are met that consent can be granted to the application, subject to an assessment of the merits of the application.

The Commissioner applied the now familiar approach to determining consistency with zone objectives by considering whether the development was antipathetic to the objectives.

In contrast to *four2five*, the reasons relied on to justify the departure from the standards in this case were not necessarily site specific.



3. Consideration

The following section addresses the provisions of clause 4.6 of the WLEP 2011 together with principles established in the NSW Land and Environment Court Case Law outlined above.

Clause 4.6(3)(A) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case)?

In order to demonstrate that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, the Five (5) Part Test established in *Winten v North Sydney Council* and expanded by Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827 is considered:

The five ways outlined in *Wehbe* include:

3.1 Five (5) Part Test - *Wehbe v Pittwater*

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).*

The objectives of the standard are:

(a) to protect residential character by providing for the subdivision of land that results in lots that are consistent with the pattern, size and configuration of existing lots in the locality,

The proposed development for the subdivision of one lot into two lots via a Torren title subdivision is in keeping with the surrounding locality.

- Below is an aerial photograph (Figure 1) which shows existing similar lot sizes within the immediate locality, including several examples on Pine Avenue, Binba Place and Alfred Road, which indicates that the proposed lot size is consistent with the majority of those surrounding.
- In view of the above, the proposal protects the local residential character by providing for the subdivision of land that results in lots that are not inconsistent with the pattern, size and configuration of existing lots in the locality.
- The proposal ensures that the proposed lot is of a minimum size that would be sufficient to provide a useable area for buildings and landscaping
- Any future development on proposed Lot 2 is also capable of maintaining the character of the locality and the prevailing subdivision pattern.



Figure 1. The subject site to be subdivided and the surrounding varying lot configuration

(b) to promote a subdivision pattern that results in lots that are suitable for commercial and industrial development,

N/A

(c) to protect the integrity of land holding patterns in rural localities against fragmentation,

N/A

(d) to achieve low intensity of land use in localities of environmental significance,

The development is not located in an environmentally significant zone.

(e) to provide for appropriate bush fire protection measures on land that has an interface to bushland,

The site is not impacted by bushfire.

(f) to protect and enhance existing remnant bushland,

The site is not impacted by remnant bushland.

(g) to retain and protect existing significant natural landscape features,

The proposed development will not impact on any significant landscape features.



(h) to manage biodiversity,

The proposed development will have no impact on biodiversity with the subject site unaffected.

(i) to provide for appropriate stormwater management and sewer infrastructure.

The proposed subdivision has appropriately design for compliant stormwater disposal. The site has existing sewer connection. Stormwater Plans, prepared by VNK Consulting, are attached to this development application package.

2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).

This exception to development standards request does not rely on this reason.

3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).

This exception to development standards request does not rely on this reason.

4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way).

This exception to development standards request does not rely on this reason.

5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).

This exception to development standards request does not rely on this reason.

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the minimum lot size control pursuant to the First Way outlined in Wehbe.

Thus, it is considered that compliance with Clause 4.6(3)(a) is satisfied.

3.2 Clause 4.6(3)(B) – Are there sufficient environmental planning grounds to justify contravening the development standard?

There are sufficient environmental planning grounds to permit the variation of the development standard. The development has been considered below with particular reference to the Objects of the Environmental Planning and Assessment Act 1979, which are accepted as the best gauge of *environmental planning grounds*.



In particular:

Context

- There are several examples of sites of the same (or similar) area as proposed in the immediate vicinity and the proposed development will be consistent. This includes existing lots to the north, south, east and west on Alfred Road, Pine Avenue and Binba Place. The closest of these being the adjoining undersized lot at 17 Alfred Road.
- The setting and context with similar lot sizes demonstrates that the varied lot size is reasonable and that it is consistent with clause 1.3(c) and (d).
- The undersized lot contains an existing dwelling, and the newly formed lot size of 509m² will retain compliance with the required minimum landscaped area of 40%, lot dimensions and acceptable levels of privacy and solar access under the Warringah DCP 2011. The siting of the dwelling on the lot also ensures privacy for the existing residents as well as surrounding neighbours.
- Proposed Lot 2 is resultant of the irregular shape of Proposed Lot 1, which has a battle axe formation. The proposed lot sizes, for both Lots 1 and 2, result in compliant lot dimensions and landscaped area. If Proposed Lot 2 were to be made more compliant there would be no significant gain in terms of residential amenity for the site or neighbouring lots.

Future Development

- The existing dwelling on proposed Lot 2 is to be retained and the proposed new lot will retain ample area to allow for any future new dwelling to be of a consistent size to those in the immediate area, compliant with Council controls.
- The new lot easily provides access and services on the site, as shown on the subdivision plan.
- The new lot will provide a landscaped area compliant with Council's controls.
- The new lot easily complies with Council's minimum lot dimensions, with a width of 16.71 metres and a depth of 30.48 metres.
- Compliant access can be provided via the existing driveway (Right of Way), ensuring safe vehicular access to the proposed lot.



- The ability to provide appropriate dwelling envelopes and development opportunities demonstrates fulfillment of clause 1.3(b) and (c).
- An appropriate level of privacy can be achieved with future development enabling ample setbacks for the existing dwelling and the proposed new dwelling to be provided.

Consistent with Zone Objectives

- The extent of the variation is considered to be in the public interest as the proposal remains consistent with the objectives of the zone allowing for future development opportunities of appropriate and reasonable housing suitable for the local community. Compliance with the lot size development standard based on this would be unreasonable, with clause 1.3(c) demonstrated as fulfilled.

Natural Environment

- The non-compliant lot size allowing for subdivision will not impact on the natural environment. Council DCP landscape controls are relevant and no area is lost or impacted through the variation, with the two proposed lot still able to ensure ample landscape area satisfying Cl1.3(b). The natural environment is unaffected by the departure to the development standard and it would be unreasonable for the development to be refused on this basis.

Social and economic welfare

- The variation to the lot size as detailed above will have a positive social impact allowing for utilisation of the site for 2 dwellings and improving access to varied housing in the local area satisfying Cl1.3(b) and accordingly refusal of the development based on this reason would be unreasonable.
- The variation to lot size as detailed above will have positive economic impacts for the site and the local area allowing for additional housing in close proximity to services satisfying Cl1.3(b) and accordingly refusal of the development based on this reason would be unreasonable.

Appropriate Environmental Planning Outcome

- The development proposed is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report.



- The variation does not result in an atypical lot layout considerate of the surrounds. The total built area and landscaped area required will achieve compliance with the relevant Council controls.
- The proposed lot complies with Council minimum dimensions (width and depth).

The variation to the lot size and the discussion above reflects the unique circumstances for the subject site and proposed development, including an assurance of a lot with ample area, access and design opportunities.

The sufficient environmental planning grounds stipulated above demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the lot size variation.

3.3 Clause 4.6(4)(A)(ii) – Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and objectives for development within the zone which the development is proposed to be carried out.

The proposed development is consistent with the objectives of the standard (see Cl 4.6(3)(A)). An assessment of consistency with the objectives of the Zone is provided below:

Zone – R2 Low Density Residential

- *To provide for the housing needs of the community within a low density residential environment.*

Consistent. The proposal is for a residential lot.

- *To enable other land uses that provides facilities or services to meet the day to day needs of residents.*

Not relevant. The proposal is for a residential lot.

- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Consistent. The proposal is for the for the Torrens Title subdivision of one lot into two lots. The new lots will allow for positive future development. Proposed Lots 1 and 2 will achieve compliant landscaped areas.

Despite the proposal seeking an exception to the minimum lot size of one lot, the percentage variation will have minimal effect to the lots' existing, and any future, dwelling, with the lot size still capable of meeting the residential controls.

The proposed development is not contrary to the public interest, because it is consistent with the objectives of the standard (see Cl 4.6(3)(A)) and objectives for development within the zone.



Clause 4.6(5)(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,

The non-compliance will not raise any matter of State or Regional Significance.

Clause 4.6(5)(b) the public benefit of maintaining the development standard,

The proposed development is not contrary to the public interest, accordingly there can be no quantifiable or perceived public benefit in maintaining the standard.

Clause 4.6(5)(c) any other matters required to be taken into consideration by the Secretary before granting concurrence

How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act.

Strict compliance with the standard would hinder the attainment of the objects specified in section 1.3 of the Act

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

Strict compliance with the 600 metre lot size development standard would hinder the development for the purpose of *promoting the orderly and economic use and development of land, protecting the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats and promoting good design and amenity of the built environment.*

The proposed development for a 2 lot subdivision, on land zoned R2 – Low Density Residential is appropriate and reasonable for the following reasons:



- There are several examples of sites with a similar lot area as proposed in the immediate vicinity.
- Proposed Lot 2 has an existing dwelling on the site and the proposed lot size of 509m² retains a compliant landscaped area, appropriate building setbacks and level of residential amenity, including privacy and solar access.
- The proposed subdivision allows for a dwelling of a consistent size as those in the immediate area, compliant with Council controls.
- The objectives of the R2 zone can be met through the subdivision of the new lots.
- The new lot can easily provide access, services and compliant landscaping on the site.

Strict numerical compliance is considered to be unnecessary and unreasonable given that the proposed variation sought is consistent with the underlying objectives of the control despite the numerical variation, of which have been reasonably satisfied under the provisions of Clause 4.6.

The statement sufficiently demonstrates that compliance with the development standard is both unreasonable and unnecessary in this instance.

The sufficient environmental planning grounds stipulated within this request, demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the lot size variation.

The proposed variation satisfies the objectives of the zone, underlying intent of Clause 4.6 and Clause 4.1, and therefore the merits of the proposed variation are considered to be worthy of approval.

Appendix One – Clause 4.6 Exceptions to Development Standards
15 Alfred Road, Brookvale (Proposed Lot 1)
Clause 4.1 – Minimum Lot Size**1. Introduction**

Clause 4.6 of the Warringah Local Environmental Plan 2011 (WLEP 2011) permits departures from development standards in certain circumstances. In this case, it is necessary to consider if compliance with the development standard is consistent with the aims of the policy and, in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in section 1.3 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* being:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The aims and objectives of Warringah LEP 2011 Clause 4.6 are as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Under Clause 4.6(3) and (4) of the WLEP 2011, consent for a development that contravenes a development standard must not be granted unless the consent authority is satisfied that:

- (3)(a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*



(3)(b) there are sufficient environmental planning grounds to justify contravening the development standard.

(4)(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out,

These matters, along with case law judgements from the NSW Land and Environment Court, are addressed below.

It is of interest that the consent authority specifies a number of development standards that cannot be varied under Clause 4.6, listed in Clause 4.6(8). Clause 4.1 – Minimum Lot Size, is not one of the standards excluded, it must therefore be assumed that the standard for minimum lot size, is one of the development standards that can have an appropriate degree of flexibility applied under clause 4.6.

2. Environmental Planning Instrument Details (Warringah LEP 2011)

2.1 What is the name of the environmental planning instrument that applies to the land?

Warringah Local Environmental Plan 2011 (WLEP 2011)

2.2 What is the zoning of the land?

R2 – Low Density Residential

2.3 What are the objectives of the zone?

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provides facilities or services to meet the day to day needs of residents.*
- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

2.4 What is the development standard being varied?

CI 4.1 of the Warringah Local Environmental Plan 2011, Minimum subdivision lot size.

2.5 Under what clause is the development standard listed in the environmental planning instrument?

CI 4.1 of the Warringah Local Environmental Plan 2011

2.6 What are the objectives of the development standard?

(1) The objectives of this clause are as follows:

(a) to protect residential character by providing for the subdivision of land that results in lots that are consistent with the pattern, size and configuration of existing lots in the locality,

(b) to promote a subdivision pattern that results in lots that are suitable for commercial and industrial development,



- (c) to protect the integrity of land holding patterns in rural localities against fragmentation,*
- (d) to achieve low intensity of land use in localities of environmental significance,*
- (e) to provide for appropriate bush fire protection measures on land that has an interface to bushland,*
- (f) to protect and enhance existing remnant bushland,*
- (g) to retain and protect existing significant natural landscape features,*
- (h) to manage biodiversity,*
- (i) to provide for appropriate stormwater management and sewer infrastructure.*

2.7 What is the numeric value of the development standard in the environmental planning instrument?

The numeric value of the minimum subdivision lot size of buildings development standard applicable to the subject site is a minimum of 600m².

2.8 What is proposed numeric value of the development standard in your development application?

The numeric value of the development in this development standard is a minimum of 568.45m².

The proposed non-compliant lot size is the result of excluding easement (B), the Right of Carriageway (ROC) of 182.55m², from the total site area of 751m². See Figure 1 below.

2.9 What is the percentage variation (between your proposal and the environmental planning instrument)?

The percentage variation sought is:

Lot 2: 5.4%

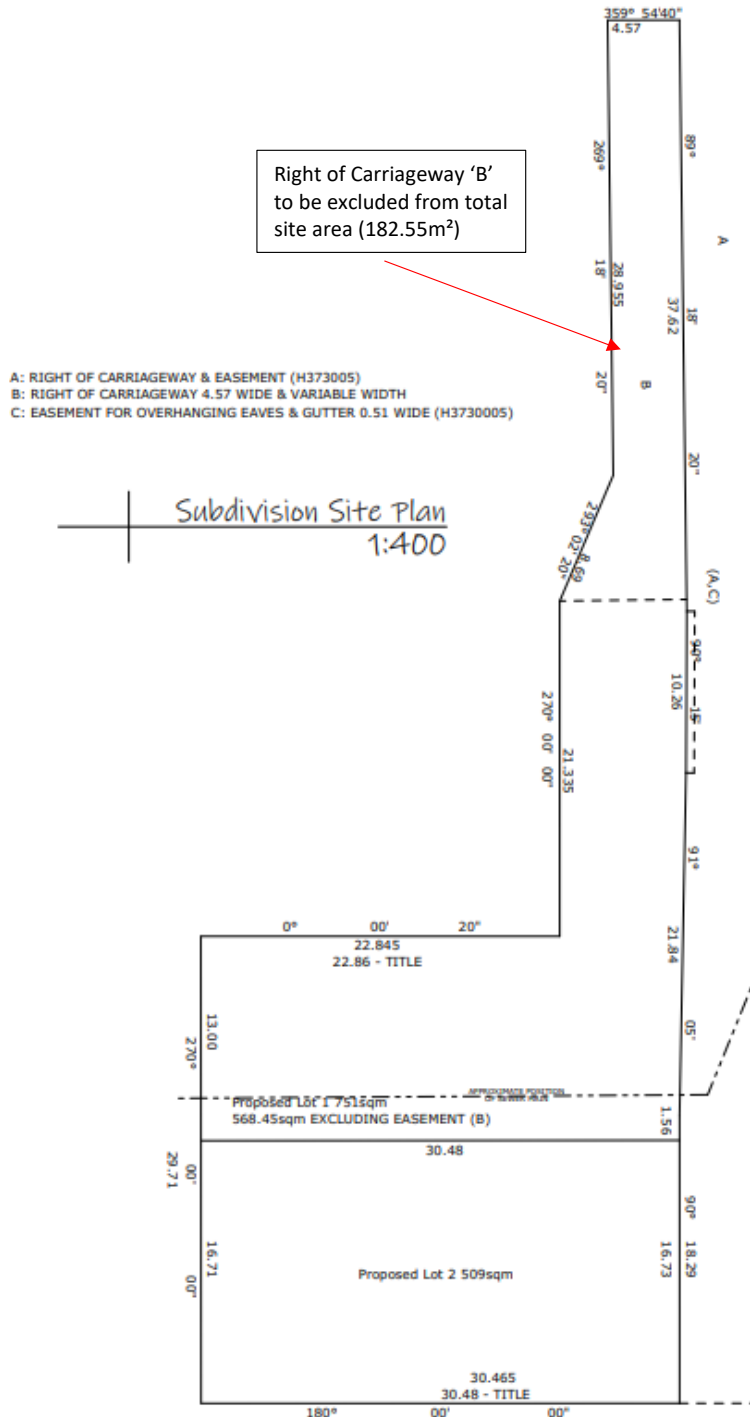


Figure 1. Proposed Subdivision Site Plan (extract from Architectural Drawing 21006-19-Issue T) showing the proposed lot sizes (Proposed Lots 1 & 2) and the ROC.



3. NSW Land and Environment Court Case Law

Several key Land and Environment Court (NSW LEC) judgements have refined the manner in which variations to development standards are required to be approached. The key findings and direction of each of these matters are outlined in the following discussion.

3.1 **Wehbe v Pittwater [2007] NSW LEC 827**

The decision of Justice Preston in *Wehbe v Pittwater [2007] NSW LEC 827*, (expanded on the findings in *Winten v North Sydney Council*), identified 5 ways in which the applicant might establish that compliance with a development standard is unreasonable or unnecessary. It was not suggested that the five ways were the only ways that a development standard could be shown to be unreasonable or unnecessary.

The five ways outlined in *Wehbe* include:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way).*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).*

In the *Micaul* decision Preston CJ confirmed that the requirements mandated by SEPP 1 (as discussed in *Wehbe*) are only relevant in demonstrating that compliance with a development standard is unreasonable or unnecessary for the purpose of Clause 4.6(3)(a).

3.2 **Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC**

In the matter of *Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC*, initially heard by Commissioner Pearson, upheld on appeal by Justice Pain, it was found that an application under Clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe v Pittwater [2007] NSW LEC 827* and demonstrate the following:

1. Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;
2. That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);



3. That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs;
4. All three elements of clause 4.6 have to be met and it is best to have different reasons for each but it is not essential.

3.3 Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7

In *Randwick City Council v Micaul Holdings*, the Court allowed a departure from development standards, provided the processes required by clause 4.6 are followed, a consent authority has a broad discretion as to whether to allow a departure from development standards under clause 4.6, even where the variation is not justified for site or development specific reasons.

Preston CJ noted that *the Commissioner did not have to be satisfied directly that compliance with each development standard was unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the appellant's written request had adequately addressed the matter in clause 4.6(3)(a) that compliance with each development standard was unreasonable or unnecessary.*

3.4 Zhang v City of Ryde

Commissioner Brown reiterated that clause 4.6 imposes three preconditions which must be satisfied before the application could be approved:

1. *The consent authority must be satisfied that the proposed development will be consistent with the objectives of the zone;*
2. The consent authority must be satisfied that the proposed development will be consistent with the objects of the standard which is not met; and
3. The consent authority must be satisfied that the written request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify contravening the development standard.

It is only if all of these conditions are met that consent can be granted to the application, subject to an assessment of the merits of the application.

The Commissioner applied the now familiar approach to determining consistency with zone objectives by considering whether the development was antipathetic to the objectives.

In contrast to *four2five*, the reasons relied on to justify the departure from the standards in this case were not necessarily site specific.



4. Consideration

The following section addresses the provisions of clause 4.6 of the WLEP 2011 together with principles established in the NSW Land and Environment Court Case Law outlined above.

Clause 4.6(3)(A) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case)?

In order to demonstrate that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, the Five (5) Part Test established in *Winten v North Sydney Council* and expanded by Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827 is considered:

The five ways outlined in *Wehbe* include:

4.1 Five (5) Part Test - *Wehbe v Pittwater*

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).

The objectives of the standard are:

(a) to protect residential character by providing for the subdivision of land that results in lots that are consistent with the pattern, size and configuration of existing lots in the locality,

The proposed development for the subdivision of one lot into two lots via a Torren title subdivision is in keeping with the surrounding locality.

- Below is an aerial photograph (Figure 2 below) which shows existing similar lot sizes within the immediate locality, including several examples on Pine Avenue, Binba Place and Alfred Road, which indicates that the proposed lot size is consistent with the majority of those surrounding.
- In view of the above, the proposal protects the local residential character by providing for the subdivision of land that results in lots that are not inconsistent with the pattern, size and configuration of existing lots in the locality.
- The residential and visual character of the site and its surrounds will remain as existing. Historically the ROC, that is to be excluded from the site area of Proposed Lot 1, has not been used as a carriageway. Accordingly, the site will appear as a compliant lot, being 751m² (if the easement were to be included). Further, the streetscape character of Alfred Road will be retained (Figure 3 below), with no structures to be built on the easement.
- The proposed lot is of a minimum size that would be sufficient to provide a useable area for buildings and landscaping, consistent with neighbouring properties.



Figure 2. The subject site to be subdivided and the surrounding varying lot configuration



Figure 3. The existing view of the ROC from the western boundary of the site (near Alfred Road frontage), including the boundary fencing along the southern boundary adjacent to 11 and 13 Alfred Road properties (preventing access from the ROC to these properties).



(b) to promote a subdivision pattern that results in lots that are suitable for commercial and industrial development,

N/A

(c) to protect the integrity of land holding patterns in rural localities against fragmentation,

N/A

(d) to achieve low intensity of land use in localities of environmental significance,

The development is not located in an environmentally significant zone.

(e) to provide for appropriate bush fire protection measures on land that has an interface to bushland,

The site is not impacted by bushfire.

(f) to protect and enhance existing remnant bushland,

The site is not impacted by remnant bushland.

(g) to retain and protect existing significant natural landscape features,

The proposed development will not impact on any significant landscape features.

(h) to manage biodiversity,

The proposed development will have no impact on biodiversity with the subject site unaffected.

(i) to provide for appropriate stormwater management and sewer infrastructure.

The proposed subdivision has appropriately design for compliant stormwater disposal. Stormwater Plans, prepared by VNK Consulting, are attached to this development application package.

2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).

This exception to development standards request does not rely on this reason.

3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).

This exception to development standards request does not rely on this reason.

4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way).

This exception to development standards request does not rely on this reason.



5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).*

This exception to development standards request does not rely on this reason.

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the minimum lot size control pursuant to the First Way outlined in Wehbe.

Thus, it is considered that compliance with Clause 4.6(3)(a) is satisfied.

4.2 Clause 4.6(3)(B) – Are there sufficient environmental planning grounds to justify contravening the development standard?

There are sufficient environmental planning grounds to permit the variation of the development standard. The development has been considered below with particular reference to the Objects of the Environmental Planning and Assessment Act 1979, which are accepted as the best gauge of *environmental planning grounds*.

In particular:

Context

- There are several examples of sites of the same (or similar) area as proposed in the immediate vicinity and the proposed development will be consistent. This includes existing lots to the north, south, east and west on Alfred Road, Pine Avenue and Binba Place. The closest of these being the neighbouring undersized lot at 17 Alfred Road.
- The setting and context with similar lot sizes demonstrates that the varied lot size (a minor variation of 5.4%) is reasonable and that it is consistent with clause 1.3(c) and (d).
- Proposed Lot 1 achieves compliance with the required minimum landscaped area of 40%, lot dimensions and acceptable levels of privacy and solar access under the Warringah DCP 2011. The siting of the dwelling on the lot also ensures privacy for the existing residents as well as surrounding neighbours.
- If Proposed Lot 1 was to be made more compliant there would be no significant gain in terms of residential amenity for the site or neighbouring lots.

Future Development

- The proposed new lot will retain ample area to allow for any future new dwelling to be of a consistent size to those in the immediate area, compliant with Council controls.
- The new lot easily provides access and services on the site, as shown on the subdivision plan.
- The new lot will provide a landscaped area compliant with Council's controls.



- The new lot easily complies with Council's minimum lot dimensions. Where the future dwelling will be located on the part of the lot with a proposed width of 13 metres and a depth of 30.48 metres.
- Compliant access can be provided via the existing driveway off Alfred Road (a Right of Way), ensuring safe vehicular access to the proposed lot.
- The ability to provide appropriate dwelling envelopes and development opportunities demonstrates fulfillment of clause 1.3(b) and (c).
- An appropriate level of privacy can be achieved with future development enabling ample setbacks for the existing dwelling and the proposed new dwelling to be provided.

Consistent with Zone Objectives

- The minor extent of the variation is considered to be in the public interest as the proposal remains consistent with the objectives of the zone allowing for future development opportunities of appropriate and reasonable housing suitable for the local community. Compliance with the lot size development standard based on this would be unreasonable, with clause 1.3(c) demonstrated as fulfilled.

Natural Environment

- The non-compliant lot size allowing for subdivision will not impact on the natural environment. Council DCP landscape controls are relevant and no area is lost or impacted through the variation, with the two proposed lot still able to ensure ample landscape area satisfying Cl1.3(b). The natural environment is unaffected by the departure to the development standard and it would be unreasonable for the development to be refused on this basis.

Social and economic welfare

- The variation to the lot size as detailed above will have a positive social impact allowing for utilisation of the site for 1 dwelling and improving access to varied housing in the local area satisfying Cl1.3(b) and accordingly refusal of the development based on this reason would be unreasonable.
- The variation to lot size as detailed above will have positive economic impacts for the site and the local area allowing for additional housing in close proximity to services satisfying Cl1.3(b) and accordingly refusal of the development based on this reason would be unreasonable.

Appropriate Environmental Planning Outcome

- The development proposed is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report.
- The minor variation does not result in an atypical lot layout considerate of the surrounds. The total built area and landscaped area required will achieve compliance with the relevant Council controls.



- The residential and visual character of the site will remain the same. This is due to the fact that the area of land that is to be excluded from the lot size, resulting in the non-compliance, has historically not been used as a carriageway. Accordingly, there will be a minimal impact on the streetscape character of Alfred Road.
- The proposed lot complies with Council minimum dimensions (width and depth).

The variation to the lot size and the discussion above reflects the unique circumstances for the subject site and proposed development, including an assurance of a lot with ample area, access and design opportunities.

The sufficient environmental planning grounds stipulated above demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the lot size variation.

4.3 Clause 4.6(4)(A)(ii) – Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and objectives for development within the zone which the development is proposed to be carried out.

The proposed development is consistent with the objectives of the standard (see Cl 4.6(3)(A). An assessment of consistency with the objectives of the Zone is provided below:

Zone – R2 Low Density Residential

- *To provide for the housing needs of the community within a low density residential environment.*

Consistent. The proposal is for a residential lot.

- *To enable other land uses that provides facilities or services to meet the day to day needs of residents.*

Not relevant. The proposal is for a residential lot.

- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Consistent. The overall proposal includes a Torrens Title subdivision of one lot into two lots. The new lot will allow for positive future development, including a compliant landscaped area.

Despite the proposal seeking an exception to the minimum lot size, the small percentage variation will have minimal effect to the lots' existing, and any future, dwelling, with the lot size still capable of meeting the residential controls.

The proposed development is not contrary to the public interest, because it is consistent with the objectives of the standard (see Cl 4.6(3)(A)) and objectives for development within the zone.

Clause 4.6(5)(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,

The non-compliance will not raise any matter of State or Regional Significance.

**Clause 4.6(5)(b) the public benefit of maintaining the development standard,**

The proposed development is not contrary to the public interest, accordingly there can be no quantifiable or perceived public benefit in maintaining the standard.

Clause 4.6(5)(c) any other matters required to be taken into consideration by the Secretary before granting concurrence**How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act.**

Strict compliance with the standard would hinder the attainment of the objects specified in section 1.3 of the Act

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

Strict compliance with the 600 metre lot size development standard would hinder the development for the purpose of *promoting the orderly and economic use and development of land, protecting the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats and promoting good design and amenity of the built environment.*

The proposed development for a 2 lot subdivision, on land zoned R2 – Low Density Residential is appropriate and reasonable for the following reasons:

- There are several examples of sites with a similar lot area as proposed in the immediate vicinity.
- The proposed lot size of 568.45m² retains a compliant landscaped area, appropriate building setbacks and level of residential amenity, including privacy and solar access.



- The proposed subdivision allows for a dwelling of a consistent size as those in the immediate area, compliant with Council controls.
- The residential and visual character of the site will remain as existing from Alfred Road as historically the land to be excluded has not been used as a carriageway.
- The objectives of the R2 zone can be met through the subdivision of the new lots.
- The new lot can easily provide access, services and compliant landscaping on the site.

Strict numerical compliance is considered to be unnecessary and unreasonable given that the proposed variation sought is consistent with the underlying objectives of the control despite the numerical variation, of which have been reasonably satisfied under the provisions of Clause 4.6.

The statement sufficiently demonstrates that compliance with the development standard is both unreasonable and unnecessary in this instance.

The sufficient environmental planning grounds stipulated within this request, demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the lot size variation.

The proposed variation satisfies the objectives of the zone, underlying intent of Clause 4.6 and Clause 4.1, and therefore the merits of the proposed variation are considered to be worthy of approval.

ITEM 5.3**DA2023/0569 - 16 DAISY STREET, DEE WHY - DEMOLITION WORKS, CONSTRUCTION OF A DRIVEWAY AND HARDSTAND, AND BOUNDARY ADJUSTMENT.**

AUTHORISING MANAGER Steve Findlay
TRIM FILE REF 2023/574060
ATTACHMENTS
1 [↓ Assessment Report](#)
2 [↓ Site Plans](#)
3 [↓ Clause 4.6](#)

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Minimum Lot Size Development Standard of Clause 4.1 pursuant to clause 4.6 of WLEP 2011 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2023/0569 for demolition works, construction of a driveway and hardstand, and boundary adjustment on land at Lot B DP 337679, 18 Daisy Street, DEE WHY and Lot A DP 337679, 16 Daisy Street, DEE WHY subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0569
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Responsible Officer:	Jordan Howard
Land to be developed (Address):	Lot B DP 337679, 18 Daisy Street DEE WHY NSW 2099 Lot A DP 337679, 16 Daisy Street DEE WHY NSW 2099
Proposed Development:	Demolition works, construction of a driveway and hardstand, and boundary adjustment.
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Leif Karlsson
Applicant:	P Chipchase Building Services

Application Lodged:	22/06/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Subdivision only
Notified:	28/06/2023 to 12/07/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.1 Minimum subdivision lot size: 16.2%
Recommendation:	Approval

Estimated Cost of Works:	\$ 45,000.00
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EXECUTIVE SUMMARY

This development application seeks consent for demolition works, construction of a driveway and hardstand, and boundary adjustment.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) as the proposal includes a greater than 10% contravention of the Clause 4.1 Minimum Subdivision Lot Size development standard of the Warringah Local Environmental Plan 2011.

The subject development application has been publicly exhibited in accordance with the Northern

Beaches Community Participation Plan. As a result of the public exhibition of the application Council received no submissions.

Critical assessment issues included, among others, the assessment of the proposed contravention to the minimum lot size development standard and variations to the Warringah Development Control Plan related to a proposed hardstand parking arrangement.

The boundary adjustment between 16 & 18 Daisy Street will result the following sized allotments:

- Lot 1 (16 Daisy Street) - 502.6m² - a 16.2% variation to the 600m² minimum lot size development standard.
- Lot 2 (18 Daisy Street) - 1082m² - no variation to the minimum lot size development standard.

The 4.6 request arises from proposed Lot 1 (16 Daisy Street), which varies the development standard by 16.2%. This variation is supported on the basis that whilst numerically undersized, the resulting Lot 1 (16 Daisy Street) is consistent with the pattern, size and configuration of existing lots within the locality.

Furthermore, the applicant has outlined that this development application is seeking to make boundary adjustments between 16 & 18 Daisy Street, whilst enabling the retention of the dwellings on both sites. This will allow for a subsequent development applications (not part of this application) to be made relating to the consolidation and/or subdivision of the allotments making up 18 Daisy Street, and further development of the sites, at a future date.

This process was suggested within a pre-lodgment meeting (see Site History for details), and if proceeded with, would effectively restore these lots to their form prior to the registration of DP 6167 in 1969, which altered the boundaries out of alignment with surrounding allotments into the form seen presently.

As such, the overall concept behind this proposal represents orderly development of land, and is consistent with the pattern, size and configuration of existing lots within the locality.

This report concludes with a recommendation that the NBLPP permit a contravention of the Clause 4.1 Minimum Subdivision Lot Size development standard pursuant to Clause 4.6 of the WLEP 2011 and grant approval to the development application, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development comprises of demolition works, construction of a driveway and hardstand, and boundary adjustment. Specifically, the following is proposed:

- Adjustment of existing boundary between 16 & 18 Daisy Street.
- Demolition of the existing driveways strips at 16 Daisy Street.
- Demolition of the existing garage at 16 Daisy Street.
- Demolition of the studio to the rear of the property at 16 Daisy Street.
- Construction of new vehicle crossing, driveway and hardstand parking space at 16 Daisy Street.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.1 Minimum subdivision lot size
Warringah Development Control Plan - B5 Side Boundary Setbacks
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - C1 Subdivision
Warringah Development Control Plan - C3 Parking Facilities
Warringah Development Control Plan - E10 Landslip Risk

SITE DESCRIPTION

Property Description:	Lot B DP 337679 , 18 Daisy Street DEE WHY NSW 2099 Lot A DP 337679 , 16 Daisy Street DEE WHY NSW 2099
Detailed Site Description:	<p>The subject site consists of three (3) allotment located on the eastern side of Daisy Street.</p> <p>The sites are irregular in shape with dimensions as follows:</p> <p><u>16 Daisy Street (Lot A DP 337679):</u></p> <ul style="list-style-type: none"> • 13.41m frontage along Daisy Street. • North side boundary of 48.69m. • South side boundary of 52.095m. • Rear boundary of 13.835m. <p><u>18 Daisy Street - located at front (Lot B DP 337679):</u></p> <ul style="list-style-type: none"> • 16.765m frontage along Daisy Street. • North side boundary of 52.095m. • South side boundary of 56.365m. • Rear boundary of 17.3m.

18 Daisy Street - located at rear (Lot A DP 347624):

- West boundary of 10.375m
- North side boundary of 16.515m.
- South side boundary of 13.965m.
- Rear boundary of 10.06m.

Note: No change to Lot A DP 347624 at the rear of 18 Daisy Street is proposed in this development application. The applicant has outlined in the Statement of Environmental Effects that this development application is seeking to make boundary adjustments between 16 & 18 Daisy Street, whilst enabling the retention of the dwellings on both sites. This will allow for a subsequent development applications (not part of this application) to be made relating to the consolidation and/or subdivision of the allotments making up 18 Daisy Street, and further development of the sites, at a future date.

The sites are located within the R2 Low Density Residential zone. Located on each 16 & 18 Daisy Street is a dwelling house, detached garage and sheds. 16 Daisy Street also accommodates a rear studio.

The sites are relatively flat with minimal change in topography.

The site contains lawn areas, garden beds and trees. There are no details of any threatened species on the subject site.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by dwelling houses. Along the east side of Daisy Street, neighbouring allotments are characterised by narrow lot widths.

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

The existing 16 & 18 Daisy Street boundaries are not in alignment with surrounding properties. The proposal seeks to effectively restore these lots to their form prior to the registration of DP 6167 in 1969, which altered the boundaries out of alignment with surrounding allotments into the form seen presently.

Figure 1 is a table which outlines the the existing lot widths and sizes of neighbouring allotments on the eastern side of Daisy Street. Figure 2 shows existing/current allotment boundaries. Figure 3 is an extract from DP6167, signed 1911, which depicts the original subdivision pattern of the street. As can be seen, 16 & 18 Daisy Street are outliers within the existing pattern, and the proposed adjustment will make 16 Daisy Street consistent with the pattern, size and configuration of existing lots within the locality, and in greater consistency with the original subdivision pattern of 1911. Furthermore, it will allow the future subdivision of 18 Daisy Street (not part of this application), with the only difference being the potential for consolidation of the small rear lot of 18 Daisy Street.

Figure 1 - Table of lot frontage widths and lot sizes along the eastern side of Daisy Street, Dee Why.

House Number (Daisy Street)	Frontage Width (m)*	Lot Size (sqm)**
2	10.06	324.0
4	10.06	344.0
6	10.06	370.0
8	10.06	393.0
10	10.06	436.0

12	10.6	447.0
14	10.06	476.0
16	Existing: 13.41 Proposed: 10.06	Existing: 670.0 Proposed: 502.6
18	Existing: 16.765 Proposed: 20.115 (with the ability to be subdivided in the future into two lots with frontages of 10.06)	Existing: 911.0 Proposed: 1082 (with the ability to be subdivided and consolidated with rear lot in the future)
20	10.06	571.0
22	10.06	588.0
24	10.06	650.0
26	10.06	652.0
28	10.06	672.0
30	10.06	698.0
32	13.7	504.0

*Lot frontages for neighbouring lots have been taken from DP6167, signed 1911, and are approximate. Detailed boundary surveying has not been undertaken for neighbouring lots.

** All Lot Sizes (except proposed Lot Sizes for 16 & 18 Daisy Street) have been taken from Council's Geographic Information System, and are approximate. Detailed boundary surveying has not been undertaken for neighbouring lots.

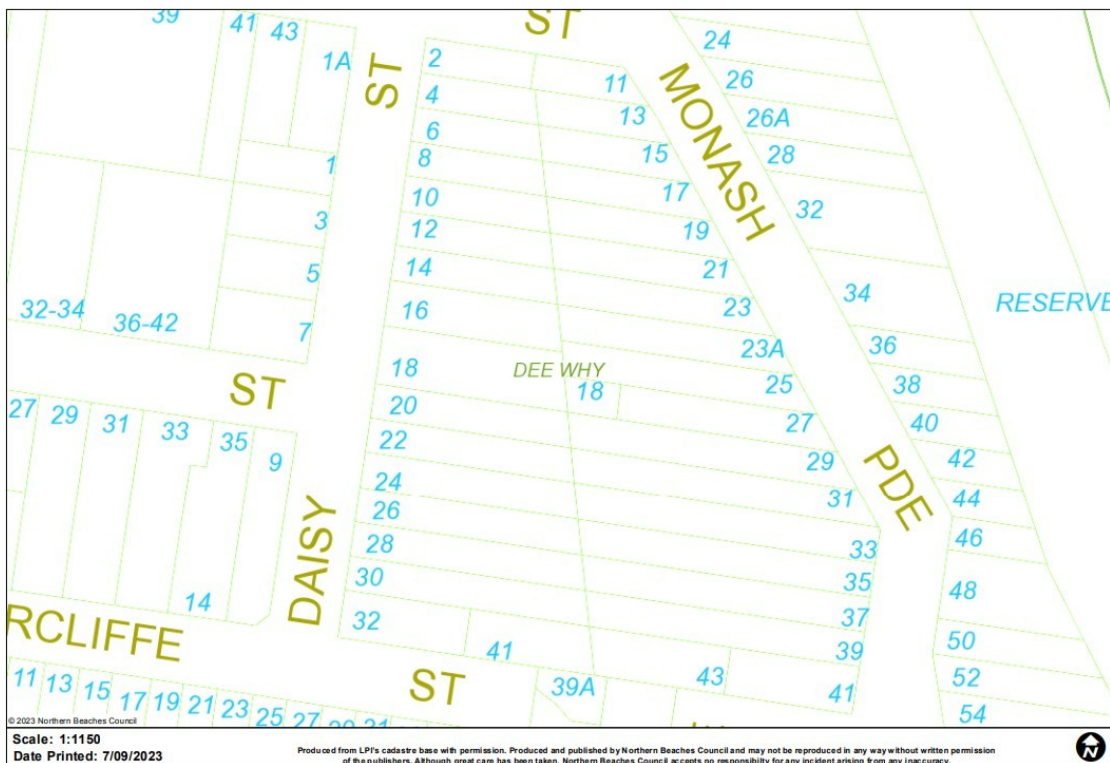


Figure 2 - Existing lot boundaries within the vicinity of 16 & 18 Daisy Street, Dee Why.

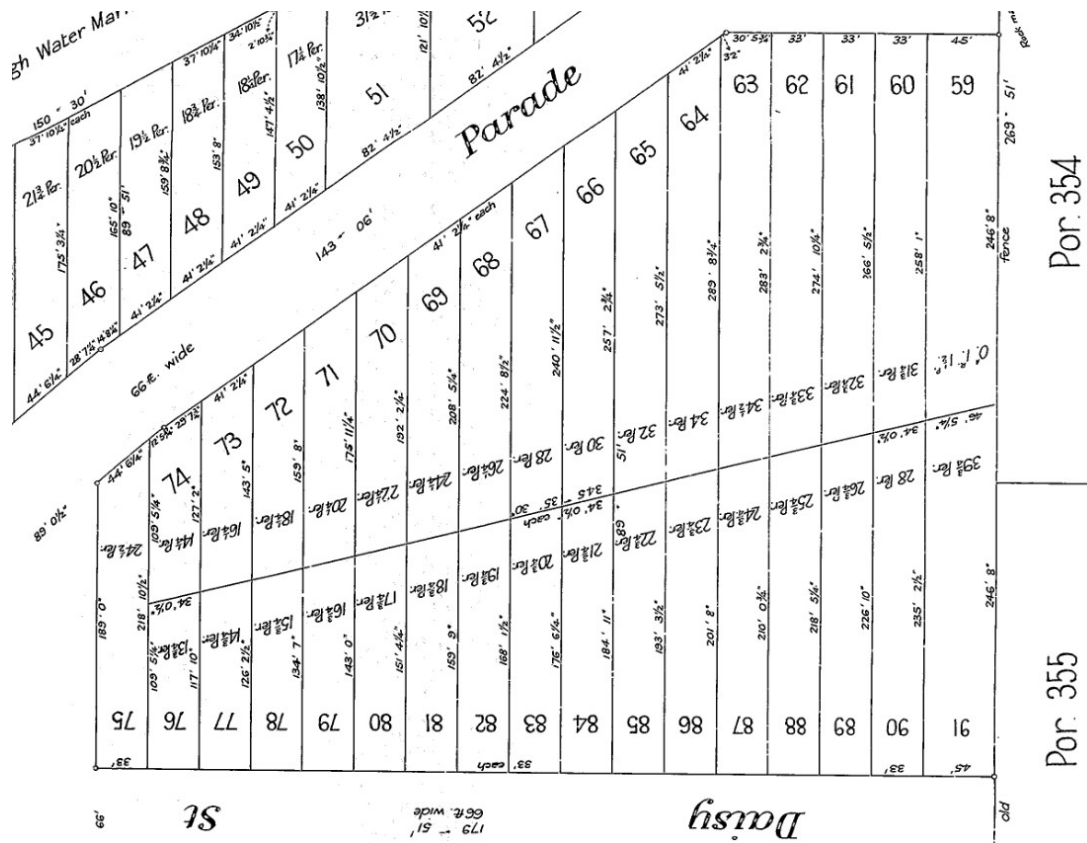


Figure 3 - Extract from DP6167, signed 1911, depicting the original subdivision pattern in the vicinity of 16 & 18 Daisy Street, Dee Why.

PLM2022/0174 - Pre-Lodgment Meeting regarding boundary adjustment of three lots

This meeting related to a proposal to subdivide the allotments into three lots, two of the three being under the minimum lot size. Concern was raised during the pre-lodgment meeting in relation to existing structures being retained over newly created lot boundaries. It was outlined that this would not be supported, as the demolition of the existing structures was considered necessary to facilitate the orderly development of land, as this would allow for each of the newly created lots to be developed individually without the constraints of any existing development.

It was outlined that the retention of the existing dwelling house at 16 Daisy Street within the boundaries of a proposed lot may be supportable, provided it can also be demonstrated that the existing dwelling house can achieve the requirements of the WLEP 2011 and WDCP.

It was also outlined that the applicant may wish to explore the option of separating the proposed development into two (2) development applications. One for an adjustment of the existing boundary between 16 and 18 Daisy Street, which may also include the consolidation of existing Lot A DP 347624 (at the rear of 18 Daisy Street) with the remainder of 18 Daisy Street, and a second development application for the subdivision of the resulting 18 Daisy Street into two (2) lots.

The applicant has outlined in the Statement of Environmental Effects that a variation to this suggested process will be followed, with this development application seeking to make boundary adjustments between 16 & 18 Daisy Street, whilst enabling the retention of the dwellings on both sites. This will allow for a subsequent development applications (not part of this application) to be made relating to the consolidation and/or subdivision of the allotments making up 18 Daisy Street, and further development of the sites, at a future date.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider “Prescribed conditions” of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p>

Section 4.15 Matters for Consideration	Comments
	<p>Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p>Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 28/06/2023 to 12/07/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p><i>Supported, with conditions</i></p> <p>The application seeks consent for demolition works, construction of a driveway and hardstand, and boundary adjustment.</p> <p>The plans and SEE indicate that no trees are required to be removed to accommodate the proposal.</p> <p>No objections are raised with regard to landscape issues subject to conditions.</p>

NECC (Coast and Catchments)	<p>Supported, without conditions</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience and Hazards) 2021 and • Relevant LEP and DCP clauses <p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore the Coastal Management Act 2016 is applicable to this DA. The proposed development is considered to be consistent with the objects, as set out under Part 1 Section 3 of the Coastal Management Act 2016.</p> <p>State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the and 'Coastal Use Area' map under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP). Hence, Clauses 2.11 and 2.12 apply for this DA.</p> <p>On internal assessment the DA satisfies requirements under clauses 2.11 and 2.12 of the SEPP R&H. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021</p> <p>Warringah LEP 2011 and Warringah DCP 2011 No coastal related issues identified.</p> <p>As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Warringah LEP 2011 and Warringah DCP 2011.</p> <p>The proposal is therefore supported.</p>
Internal Referral Body	Comments
NECC (Development Engineering)	<p>Supported, with conditions</p> <p>The proposed works include a boundary adjustment and vehicle crossing and driveway construction. Kerb reinstatement and demolition works at 16 Daisy Street will also be required. The impervious area of the new lots post subdivision will remain below 40% and hence on site detention is not required if no new dwellings are constructed.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p>Supported, with conditions</p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

SEPP (Resilience and Hazards) 2021**Chapter 2 – Coastal Management**

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

Division 2 Coastal Vulnerability Area**2.9 Development on land within the coastal vulnerability area**

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and
- b) the proposed development:
 - i) is not likely to alter coastal processes to the detriment of the natural environment or
 - ii) other land, and
 - iii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and
- c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.

Comment:

There is currently no adopted Coastal Vulnerability Area Map, however, Council's Coasts and Catchments officers have reviewed the proposed development and it is supported, without conditions.

Division 4 Coastal use area**2.11 Development on land within the coastal use area**

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
 - a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - i) existing, safe access to and along the foreshore, beach, headland or rock
 - ii) platform for members of the public, including persons with a disability,
 - iii) overshadowing, wind funnelling and the loss of views from public places to
 - iv) foreshores,
 - v) the visual amenity and scenic qualities of the coast, including coastal headlands, Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and

- b) is satisfied that:
 - i) the development is designed, sited and will be managed to avoid an
 - ii) adverse impact referred to in paragraph (a), or
 - iii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The proposed development is sited and designed so as to not have an adverse impacts on any of the above matters. Council's Coasts and Catchments officers have reviewed the proposed development and it is supported, without conditions.

Division 5 General

2.12 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

The development will not result in an increased risk of coastal hazards. Council's Coasts and Catchments officers have reviewed the proposed development and it is supported, without conditions.

2.13 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment:

Council's Coasts and Catchments officers have reviewed the proposed development, including in regard to coastal management programs, and it is supported, without conditions.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Warringah Local Environmental Plan 2011

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size:	Lot 1: 16 Daisy Street - 600m ²	502.6m ²	16.2% (97.4m ²)	No
	Lot 2: 18 Daisy Street - 600m ²	1082m ²	-	Yes
Height of Buildings:	8.5m	Existing dwellings to remain - under 8.5m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision - consent requirements	Yes
2.7 Demolition requires consent	Yes
4.1 Minimum subdivision lot size	No (see detail under Clause 4.6 below)
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of Non-compliance

Development standard:	Minimum Subdivision Lot Size
Requirement:	600m ²
Proposed:	Lot 1: 16 Daisy Street - 502.6m ² Lot 2: 18 Daisy Street - 1082m ²

Percentage variation to requirement:	Lot 1: 16 Daisy Street - 16.2% Lot 2: 18 Daisy Street - No variation
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Assessment of Request to Vary a Development Standard

The following assessment of the variation to Clause 4.1 - Minimum subdivision lot size development standard, has taken into consideration the judgements contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 4.6 Exceptions to Development Standards

(1) *The objectives of this clause are as follows:*

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Comment:

Clause 4.1 - Minimum subdivision lot size development standard is not expressly excluded from the operation of this clause.

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

(4) *Development consent must not be granted for development that contravenes a development standard unless:*

- (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Secretary has been obtained.*

Clause 4.6 (4)(a)(i) (Justification) Assessment

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request,

seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

Comment:

The Applicant's written request has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and*

assessment.

Applicants Written Request

The applicants written request argues, in part:

- *The proposal (notwithstanding the numerical contravention) is consistent with the objectives of the development standard.*
- *The departure to the minimum subdivision lot size standard will not introduce any significant adverse environmental or amenity related impacts on neighbouring properties.*
- *The proposed development is generally consistent with the pattern, size and configuration of existing lots along the eastern side of Daisy Street.*
- *The proposal reinforces the existing development pattern on the subject site and within the surrounding area.*
- *The proposed means of the boundary realignment, necessitating a breach to the minimum lot size standard, is more consistent with the Objects of the EP&A Act in terms of promoting the orderly development of land.*
- *The proposed use is consistent with the existing and desired character of the area.*
- *The proposal will enable the provision for future subdivision of the site to meet the long-term objective of the site. This is in accordance with Council's strategic plans in providing diverse housing typology and increased housing for the community.*

It is considered that the arguments provided by the applicant are reasonable and supported. The proposed lot size of Lot 1 (16 Daisy Street), whilst numerically undersized, is consistent with the pattern, size and configuration of existing lots within the locality. Furthermore, the proposal establishes the foundation for the further subdivision of 18 Daisy Street (see Site History and PLM2022/0174 for further discussion on this), which will result in lots that are generally consistent with the pattern, size and configuration of existing lots within the locality. As noted in PLM2022/0174, undertaking this application as a first step is consistent with promoting the orderly development of land. The development, as will be outlined below, is consistent with the objectives of the minimum subdivision lot size development standard and the underlying objectives of the R2 Low Density Residential zone, notwithstanding the proposed numerical variation. The provision of increased housing supply and diversity in proximity to the Dee Why Strategic Centre is aligned with Council's strategic plans and the North District Plan (which bridges regional and local planning).

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

Clause 4.6 (4)(a)(ii) (Public Interest) Assessment

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Minimum Subdivision Lot Size development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of the Development Standard

The underlying objectives of the standard, pursuant to Clause 4.1 – 'Minimum subdivision lot size' of the WLEP 2011 are:

(1) The objectives of this clause are as follows:

(a) to protect residential character by providing for the subdivision of land that results in lots that are consistent with the pattern, size and configuration of existing lots in the locality.

Comment:

The existing allotments are currently inconsistent with the pattern, size and configuration of existing lots in the locality. The proposed lot size of Lot 1 (16 Daisy Street), whilst numerically undersized, is consistent with the pattern, size and configuration of existing lots within the locality. The proposal therefore restores a consistent pattern.

(b) to promote a subdivision pattern that results in lots that are suitable for commercial and industrial development.

Comment:

The lots are not within a commercial or industrial zone and are suitable for residential development. This objective is not relevant, in this case.

(c) to protect the integrity of land holding patterns in rural localities against fragmentation.

Comment:

The lots are not within a rural locality. This objective is not relevant, in this case.

(d) to achieve low intensity of land use in localities of environmental significance.

Comment:

The site is zoned R2 Low Density Residential and is not located in an area of environmental significance. This objective is not relevant, in this case.

(e) to provide for appropriate bush fire protection measures on land that has an interface to bushland.

Comment:

The site is not on an interface to bushland or on bush fire prone land. This objective is not relevant, in this case.

(f) to protect and enhance existing remnant bushland.

Comment:

The proposal does not require the removal of trees and is not located at an interface to bushland.

(g) to retain and protect existing significant natural landscape features.

Comment:

The proposed development retains and protects the existing natural landscape features, noting no trees are proposed for removal.

(h) to manage biodiversity.

Comment:

The site is not located in an area of environmental or biological significance.

(i) to provide for appropriate stormwater management and sewer infrastructure.

Comment:

The proposed boundary adjustment will not impact existing stormwater management and sewer infrastructure.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of Clause 4.1 – 'Minimum subdivision lot size' of the WLEP 2011.

Zone Objectives

The underlying objectives of the R2 Low Density Residential zone are:

- *To provide for the housing needs of the community within a low density residential environment.*

Comment:

The proposed development will continue to provide for the housing needs of the community, as the boundary adjustment involves the retention of dwellings on both allotments. The subdivision supports further residential development or subdivision on the site, which would be in accordance with the housing needs of the community within a low density residential environment.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment:

The proposal does not include any other land uses other than residential. This objective is not relevant, in this case.

- *To ensure that low density residential environments are characterised by landscaped settings*

that are in harmony with the natural environment of Warringah.

Comment:

The proposed development retains and protects the existing natural landscape features, noting no trees are proposed for removal. The development will maintain a low density residential environment characterised by landscaped settings that are in harmony with the natural environment of Warringah.

Conclusion

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone.

Clause 4.6 (4)(b) (Concurrence of the Secretary) Assessment

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning & Infrastructure, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Minimum Subdivision Lot Size Development Standard is assumed by the Local Planning Panel.

Warringah Development Control Plan

Built Form Controls

The following built form tables are related to the existing structures (and proposed hardstand) that are to remain at 16 & 18 Daisy Street, in relation to the adjusted boundary.

16 Daisy Street				
Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	N/A - no change to wall heights	N/A	N/A
B3 Side Boundary Envelope	North 5m	Inside envelope (unchanged by proposal)	-	Yes
	South 5m	Inside envelope	-	Yes
B5 Side Boundary Setbacks	North 0.9m	0.9m - to existing dwelling (unchanged by proposal)	-	Yes
	South 0.9m	0m - to hardstand parking 0.9m - to existing dwelling	100% -	No Yes
B7 Front Boundary Setbacks	6.5m	0m - to hardstand parking 9.2m - to existing dwelling (unchanged by proposal)	100% -	No Yes

B9 Rear Boundary Setbacks	6m	18.7m - to existing shed (unchanged by proposal)	-	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (201m ²)	51.3% (257.8m ²)	-	Yes

18 Daisy Street				
Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	N/A - no change to wall heights	N/A	N/A
B3 Side Boundary Envelope	North 5m	Inside envelope	-	Yes
	South 5m	Inside envelope (unchanged by proposal)	-	Yes
B5 Side Boundary Setbacks	North 0.9m	3.6m - to existing garage 6.3m - to existing dwelling	- -	Yes Yes
	South 0.9m	1.8m - to existing dwelling (unchanged by proposal)	-	Yes
B7 Front Boundary Setbacks	6.5m	13.5m - to existing dwelling (unchanged by proposal)	-	Yes
B9 Rear Boundary Setbacks	6m	9.5m - to existing shed (unchanged by proposal)	-	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (432.8m ²)	70% (757m ²)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C1 Subdivision	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	No	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes

C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
Clause	Compliance with Requirements	Consistency Aims/Objectives
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	No	Yes

Detailed Assessment

B5 Side Boundary Setbacks

Description of non-compliance

Under Clause B5 Side Boundary Setbacks of the DCP, development is to maintain a minimum setback from the side boundaries of 0.9m. The control stipulates that the side boundary setback areas are to be landscaped and free of any above or below ground structures, car parking or site facilities other than driveways and fences.

After the boundary adjustment, the existing dwelling at Lot 1 (16 Daisy Street) will have a 0.9m setback to the north side boundary and a 0.9m setback to the south side boundary, in compliance with this control.

After the boundary adjustment, the existing dwelling at Lot 2 (18 Daisy Street) will have a 6.3m setback to the north side boundary and a 1.6m setback to the south side boundary, in compliance with this control. The existing detached garage will be setback 3.6m from the north side boundary, again in compliance with this control.

However, in demolishing the existing detached garage at Lot 1 (16 Daisy Street) and adjusting the boundary, the parking arrangement on that site is proposed to change. Lot 1 (16 Daisy Street) will

have a hardstand parking space in front of the existing dwelling. This proposed hardstand space is considered as 'carparking' and is, therefore, technically numerically non-compliant with the required 0.9m side setback distance. This space has nil setback from southern side boundary, representing a 100% variation to the control.

It is noted that this proposal establishes the foundation for the further subdivision and/or development of 16 & 18 Daisy Street (see Site History and PLM2022/0174 for further discussion on this), with this parking arrangement somewhat temporary. Future development of the sites related to the applicants overall goals will involve assessment against side setback requirements, and where more permeant, physicals parking structures / arrangement are proposed, DCP controls will again be assessed against.

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To provide opportunities for deep soil landscape areas.*

Comment:

The proposal complies with the landscape open space requirements of the WDCP. Therefore, sufficient opportunities for deep soil landscape areas are provided.

- *To ensure that development does not become visually dominant.*

Comment:

The existing dwellings on both lots are unchanged, with only a hardstand parking space proposed in front of the existing dwelling at Lot 1 (16 Daisy Street). The hardstand space will not have an associated vertical structure (such as a carport), therefore creating a sense of openness and not changing the existing pattern of buildings. In this regard, the proposal maintains visual continuity with the streetscape and will not be visually dominant.

- *To ensure that the scale and bulk of buildings is minimised.*

Comment:

As above, the existing dwellings on both lots are unchanged, with only a hardstand parking space proposed in front of the existing dwelling at Lot 1 (16 Daisy Street). The hardstand space will not have an associated vertical structure (such as a carport), therefore creating a sense of openness and not changing the existing pattern of buildings. In this regard, the proposal maintains visual continuity with the streetscape and will not increase the scale or bulk of buildings.

- *To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.*

Comment:

As above, the proposed hardstand space will not have an associated vertical structure (such as a carport), and is therefore open. As such, separation between buildings is maintained. With

no associated vertical structure there are no privacy, amenity or solar access impacts as a result of the proposal.

- To provide reasonable sharing of views to and from public and private properties.

Comment:

The proposed hardstand space does not include an associated vertical structure (such as a carport). As such, there is no built form that will obstruct any existing views.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

B7 Front Boundary Setbacks

Description of Non-compliance

Under Clause B7 Front Boundary Setbacks of the DCP, development is to maintain a minimum setback from the front boundary of 6.5m. The control stipulates that the front boundary setback area is to be landscaped and generally free of any structures, basements, carparking or site facilities other than driveways, letter boxes, garbage storage areas and fences

The existing dwelling at Lot 1 (16 Daisy Street) has a front setback of 9.2m, which is unchanged by the proposed boundary adjustment and compliant with this control.

The existing dwelling at Lot 2 (18 Daisy Street) has a front setback of 13.5m, which is unchanged by the proposed boundary adjustment and compliant with this control.

However, in demolishing the existing detached garage at Lot 1 (16 Daisy Street) and adjusting the boundary, the parking arrangement on that site is proposed to change. Lot 1 (16 Daisy Street) will have a hardstand parking space in front of the existing dwelling. This proposed hardstand space is considered as 'carparking' and is, therefore, technically numerically non-compliant with the required 6.5m front setback distance. This space has nil setback from the boundary, representing a 100% variation to the control.

It is noted that this proposal establishes the foundation for the further subdivision and/or development of 16 & 18 Daisy Street (see Site History and PLM2022/0174 for further discussion on this), with this parking arrangement somewhat temporary. Future development of the sites related to the applicants overall goals will involve assessment against front setback requirements, and where more permeant, physicals parking structures / arrangement are proposed, DCP controls will again be assessed against.

Merit Consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- To create a sense of openness.

Comment:

The proposed hardstand space will not have an associated vertical structure (such as a carport), therefore creating a sense of openness.

- *To maintain the visual continuity and pattern of buildings and landscape elements.*

Comment:

The existing dwellings on both lots are unchanged, with only a hardstand parking space proposed in front of the existing dwelling at Lot 1 (16 Daisy Street). The hardstand space will not have an associated vertical structure (such as a carport), therefore creating a sense of openness and not changing the existing pattern of buildings. In this regard, the proposal maintains visual continuity with the streetscape. Furthermore, it is noted that a number of properties in the street have parking structures within the front setback (see 4, 6 & 8 Daisy Street). The proposal is only for a hardstand, with no associated vertical structure (such as a carport), and therefore of lesser impact on the streetscape than these neighbouring examples.

- *To protect and enhance the visual quality of streetscapes and public spaces.*

Comment:

As above, the proposal maintains visual continuity with the streetscape and is of minimal discernable impact. The proposed hardstand will not detract from the existing quality of streetscapes and public spaces.

- *To achieve reasonable view sharing.*

Comment:

The proposed hardstand space does not include an associated vertical structure (such as a carport). As such, there is no built form that will obstruct any existing views.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is **supported**, in this particular circumstance.

C1 Subdivision

Component	Requirement	Proposed	Compliant
Lot requirements	<p>R2 Low Density Residential zone requirements:</p> <p>Proposed new allotments:</p> <p>a) Minimum width: 13 metres b) Minimum depth: 27 metres; and c) Minimum building area: 150m²</p>	<p>Lot 1 (16 Daisy Street) a) Minimum Width: 10.06m - a 22.6% variation to the required width b) Minimum Depth: 48.69m c) Minimum Building Area: Retaining existing house (approx. 100m²). Building area of 150.0m² can be achieved.</p> <p>Lot 2 (18 Daisy Street) a) Minimum Width: 20.115m b) Minimum Depth: 51.25m c) Minimum Building Area: Retaining existing house (approx. 125m²). Building area of 150.0m² can be achieved.</p>	No - Refer to discussion below this table

<p>Access</p>	<p>Motor vehicle access to each residential allotment is required from a constructed and dedicated public road.</p> <p>Where access is proposed to a section of unconstructed public road, then the subdivision will need to provide legal, constructed access to the Council's satisfaction.</p> <p>Access for Council service vehicles, emergency vehicles and garbage collection vehicles must be provided.</p> <p>Driveways, accessways, etc, to allotments should have a gradient not exceeding 1:4 and allow for transitions at a minimum length of 1.5m and at a grade no steeper than 1:10.</p> <p>Driveways in excess of 200 metres will not be allowed for residential development.</p> <p>Driveways that are 30m or more in length require a passing bay to be provided every 30m. To provide a passing bay, driveways shall be widened to 5.0m for a distance of at least 10m.</p> <p>Passing bays should have regard to sight conditions and minimise vehicular conflict.</p> <p>Vehicular ingress/egress points to internal lots may be used as passing/turning bays, subject to extension of a right-of-carriageway over the passing/turning bay.</p> <p>Rights-of-carriageway should be located so as to accommodate all vehicle turning facilities.</p> <p>Width of accessways are to be as</p>	<p>The proposal includes new driveway access and crossing to Lot 1 (16 Daisy Street).</p> <p>The proposal has been reviewed by Council's Development Engineer who raises no objections, subject to recommended conditions.</p> <p>Access requirements have been achieved.</p>	<p>Yes</p>
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follows:		
Number of lots to be serviced	Width of clear constructed accessway (m)	
1 - 5	3.5	
6 - 10	5.0	
in excess of 10	Access is to be provided by a private or public road constructed with a width that is in accordance with Council standard specifications for engineering works (AUSPEC 1)	
Provision of services in rights of carriageway are as follows:		
Number of lots to be serviced	Additional width to be provided in Right of Carriageway (m)	
Up to 3 lots	0.5	
4 or more lots	1.0	

Design and construction	<p>All roads, rights of carriageway, drainage design and construction is to be in accordance with Council's policy requirements including; AUSPEC 1 - Council's Specification for Engineering Works, Development Engineering Minor Works Specification, On Site Stormwater Detention (OSD) Technical Specification and Council's Water Sensitive Urban Design Policy. Additionally, internal roads must be designed in accordance with the relevant Australian Standards.</p> <p>Subdivision design needs to maximise and protect solar access for each dwelling by considering factors such as orientation, shape, size and lot width.</p>	The proposal has been reviewed by Council's Development Engineer who raises no objections, subject to recommended conditions.	Yes
Drainage	<p>Provision should be made for each allotment to be drained by gravity to a Council-approved drainage system. The topography of the land should not be altered to adversely affect the natural drainage patterns. Stormwater should drain directly to a Council-approved drainage system and not via adjoining properties unless via a formalised interallotment drainage system. The proposed allotments are to be drained to the direction of the natural fall of the land. Interallotment drainage easements will be required through adjoining properties to adequately drain land to Council's downstream system.</p>	The proposal has been reviewed by Council's Development Engineer who raises no objections, subject to recommended conditions.	Yes
Restrictions	<p>Any easement, right-of-carriageway, or other restriction that is placed on the title of any land as a requirement of the approval of the subdivision is to be protected by a positive covenant or like instrument with the Council nominated as a party.</p>	The proposal has been reviewed by Council's Development Engineer who raises no objections, subject to recommended conditions.	Yes

Environmentally constrained land	<p>In areas subject to constraints such as flooding, tidal inundation, threatened species, landslip risk, bushfire or any other matter, adequate safe area for building, where the risk from hazard is minimised, is to be provided within an allotment.</p> <p>Where possible, lot boundaries should utilise natural land features such as creeks, escarpments and rock outcrops.</p>	<p>The proposal has been reviewed by Council's Development Engineer who raises no objections, subject to recommended conditions.</p> <p>The proposal has been reviewed by Council's Coasts and Catchments Officer who raises no objections, without conditions.</p> <p>Refer to the section of this report on WDCP Clause E10 Landslip Risk for discussion on landslip risk. In summary, whilst a small portion at the rear of the site is mapped as Landslip Area B, given the minimal nature of physical works proposed, and the location of these works outside Landslip Area B, Council is satisfied a Preliminary Geotechnical Assessment is not required in this instance.</p> <p>The site is not subject to bushfire or flood risks.</p>	Yes
Bushfire	Subdivision should be designed to minimise the risk from potential bushfire. Asset protection zones should be contained within the property boundaries of the new subdivision.	The proposed lots are not located on bush fire prone land.	Yes

Description of Non-compliance

As outlined in the table above, Lot 1 (16 Daisy Street) is deficient of the the minimum width control for new allotments. Lot 1 (16 Daisy Street) has a width of 10.06m, representing a 22.6% variation to the required 13m width.

Notably, Lot 2 (18 Daisy Street) has a width of 20.115m, complying with this control, and both lots comply with all other requirements of the control.

Merit Consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- To regulate the density of development.

Comment:

The proposal is considered to be consistent with the existing subdivision pattern located along Daisy Street. It is therefore considered that the proposed subdivision is an acceptable outcome in relation to regulating the density.

- To limit the impact of new development and to protect the natural landscape and topography.

Comment:

The subject site is generally flat and is substantially vegetated. Additionally, there is appropriate opportunity for landscaped area which will comply with the control and provide an adequate protection of the landscape. The application has been reviewed by Council's Landscape Officer who raised no objection to approval, subject to conditions. The proposed development will therefore appropriately limit the impact of existing and future development.

- To ensure that any new lot created has sufficient area for landscaping, private open space, drainage, utility services and vehicular access to and from the site.

Comment:

The proposed lots obtain sufficient area for landscaping, private open space, drainage, utility services, and vehicular access. Furthermore, the proposal has been reviewed by Council's Landscape Officer and Development Engineer, who are supportive of the proposal, subject to conditions.

- To maximise and protect solar access for each dwelling.

Comment:

Notwithstanding that the proposed subdivision pattern provides an east-west orientation (an existing limitation due to the location of the lots on the eastern side of Daisy Street), the pattern is considered to provide opportunity for solar access from the north to the dwellings within the proposed lots and existing surrounding dwellings.

- To maximise the use of existing infrastructure.

Comment:

The creation of the two lots will result in a substantial use of existing infrastructure including services.

- To protect the amenity of adjoining properties.

Comment:

The existing dwellings to remain on each allotment are generally compliant with built form controls, with the exception of the proposed parking and front setback at Lot 1 (16 Daisy Street). Furthermore, it is considered that there is adequate scope for an appropriately designed and compliant dwelling house on each of the proposed lots that will protect the amenity of adjoining properties.

- To minimise the risk from potential hazards including bushfires, land slip and flooding.

Comment:

Refer to the section of this report on WDCP Clause E10 Landslip Risk for discussion on landslip risk. In summary, whilst a small portion at the rear of the site is mapped as Landslip Area B, given the minimal nature of physical works proposed, and the location of these works outside Landslip Area B, Council is satisfied a Preliminary Geotechnical Assessment is not required in this instance. The site is not subject to bushfire or flood risks.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is **supported**, in this particular circumstance.

C3 Parking Facilities

Description of Non-compliance

Clause C3 Parking Facilities requires two (2) off-street parking spaces for a dwelling house.

The existing parking arrangement at Lot 2 (18 Daisy Street) will be maintained and unchanged under this application, with the required two (2) parking spaces provided on this allotment.

The existing parking arrangement at Lot 1 (16 Daisy Street) allows for two (2) off-street parking spaces, one located in the existing rear detached garage and the other on the driveway along the side of the house. In demolishing the existing detached garage and driveway at Lot 1 (16 Daisy Street) and adjusting the boundary, the parking arrangement on that site is proposed to change. Lot 1 (16 Daisy Street) will have a hardstand parking space in front of the existing dwelling providing one (1) off-street parking space, a proposed variation of 50% to this control.

It is noted that this proposal establishes the foundation for the further subdivision and/or development of 16 & 18 Daisy Street (see Site History and PLM2022/0174 for further discussion on this), with this parking arrangement somewhat temporary. Future development of the site related to the applicants overall goals will involve assessment against parking requirements, and where further more proposals arise, DCP controls will again be assessed against.

Merit Consideration

The development is considered against the underlying Objectives of the Control as follows:

- To provide adequate off street carparking.

Comment:

The development provides the following on-site car parking:

Use	Required	Existing	Provided
Lot 1 (16 Daisy Street)	2	2	1

Lot 2 (18 Daisy Street)	2	2	2
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The provision of off-street parking on Lot 2 (18 Daisy Street) remains compliant.

The provision of off-street parking on Lot 1 (16 Daisy Street) is reduced by one (1) space. This is a result of the demolition of existing parking structures along the side of the existing dwelling to enable the boundary adjustment whilst retaining the existing dwelling. It was outlined in PLM2022/0174 that the demolition of structures which would be located across newly created lot boundaries was considered necessary to facilitate the orderly development of land, as this will allow for each of the newly created lots to be developed individually without the constraints of any existing development.

Notwithstanding the technical non-compliance with the requirements, the resultant car parking arrangement for Lot 1 (16 Daisy Street) is considered satisfactory for the demands generated by the site. The proposal is not expected to unreasonably increase the demand for on-street parking.

- To site and design parking facilities (including garages) to have minimal visual impact on the street frontage or other public place.

Comment:

The hardstand space will not have an associated vertical structure (such as a carport), therefore creating a sense of openness and not having a visual impact of the street frontage or other public spaces.

- To ensure that parking facilities (including garages) are designed so as not to dominate the street frontage or other public spaces.

Comment:

As above, the hardstand space will not have an associated vertical structure (such as a carport), therefore will not dominate the street frontage or other public spaces

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is **supported**, in this particular circumstance.

E10 Landslip Risk

Description of Non-compliance

The sites are partially mapped within 'Area B' on the Landslip Risk Map pursuant to the WLEP 2011. The area of the sites within Area B are very minimal at the rear of the lots, depicted in *Figure 4*.

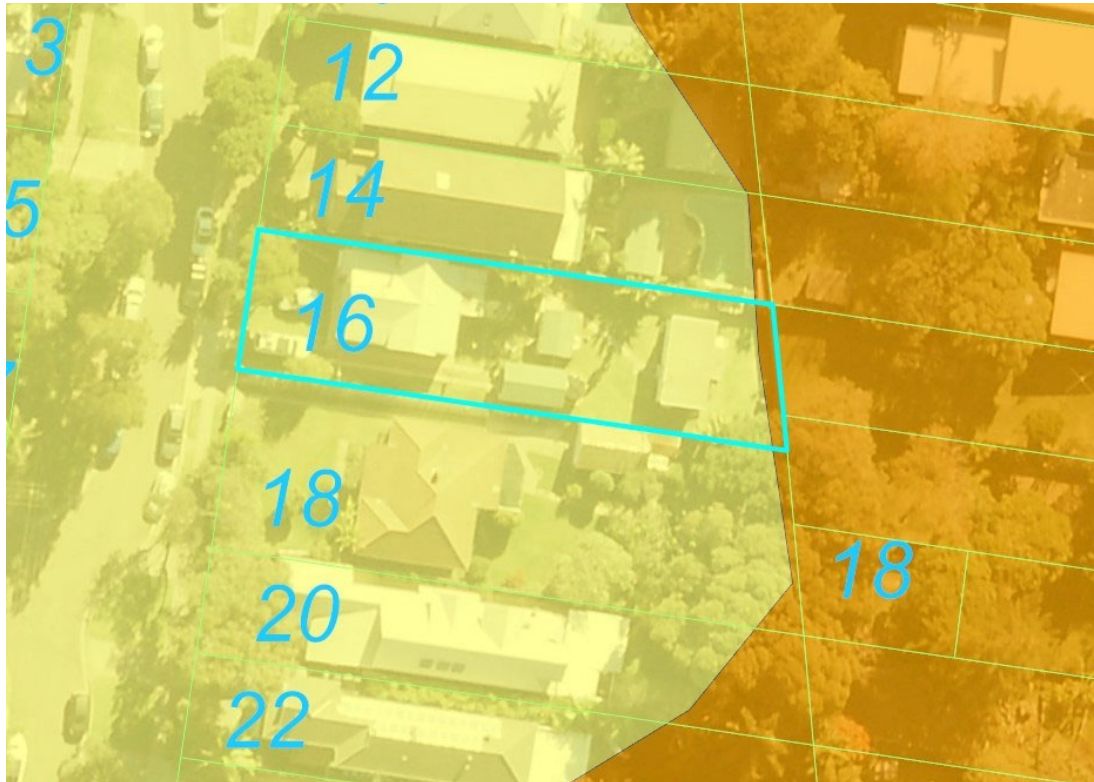


Figure 4 - Aerial image of the subject sites with Landslip Area A overlaid in yellow and Landslip Area B overlaid in orange.

For land identified as being in Area A, a Preliminary Geotechnical Assessment is not strictly required, but may be required at Council's discretion.

For land identified as being in Area B or D, a Preliminary Geotechnical Assessment is normally required to be submitted. Exemption is provided for applications that do not involve any site, building or structural works.

This application seeks approval for minor site works, including demolition of the rear studio, detached garage and existing driveway. These works are all outside Landslip Area B. The only construction works are the construction of a new driveway crossover and hardstand, which occur outside Landslip Area B, at the opposite front end of the property.

The application has been reviewed by Council's Development Engineers who have raised no objection to the proposal, subject to conditions.

A Preliminary Geotechnical Assessment has not been submitted with this application. However, given the minimal nature of physical works proposed, and the location of these works outside Landslip Area B, Council is satisfied a Preliminary Geotechnical Assessment is not required in this instance.

Merit Consideration

With regard to the consideration for a variation, the development is considered against the underlying

Objectives of the Control as follows:

- To ensure development is geotechnically stable.

Comment:

Physical works in this proposal are outside Landslip Area B, and primarily consist of demolition of some structures and construction of a driveway / hardstand. Such works are minor in regard to geotechnical risk and are not likely to exacerbate landslip hazards. The application has been reviewed by Council's Development Engineers who have raised no objection to the proposal, subject to conditions.

Any future development applications on the subject sites which propose substantial building works will have to supply a Preliminary Geotechnical Assessment, which will ensure development is geotechnically stable.

- To ensure good engineering practice.

Comment:

The application has been reviewed by Council's Development Engineers who have raised no objection to the proposal, subject to conditions.

- To ensure there is no adverse impact on existing subsurface flow conditions.

Comment:

Given the minimal nature of the works proposed, there is unlikely to be any adverse impact on existing subsurface flow conditions.

- To ensure there is no adverse impact resulting from stormwater discharge.

Comment:

The works will decrease impervious areas (given the works propose demolition of structures) and not require changes to existing stormwater management on the subject sites. Therefore, the proposal will not alter stormwater discharge.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is **supported**, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this application.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of Clause 4.1 Minimum Subdivision Lot Size has adequately addressed and demonstrated that:

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
- b) There are sufficient environmental planning grounds to justify the contravention.

2) The proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

PLANNING CONCLUSION

This proposal, for demolition works, construction of a driveway and hardstand, and boundary

adjustment has been referred to the Northern Beaches Local Planning Panel (NBLPP) as the proposal includes a greater than 10% contravention of the Clause 4.1 Minimum Subdivision Lot Size development standard of the Warringah Local Environmental Plan 2011.

The subject development application has been publicly exhibited in accordance with the Northern Beaches Community Participation Plan. As a result of the public exhibition of the application Council received no submissions.

Critical assessment issues included, among others, the assessment of the proposed contravention to the minimum lot size development standard and variations to the Warringah Development Control Plan 2011 related to the proposed hardstand parking arrangement. These assessment issues are discussed in the following sections:

- Warringah Local Environmental Plan 2011 - 4.6 Exceptions to development standards
- Warringah Development Control Plan 2011 - B5 Side Boundary Setbacks
- Warringah Development Control Plan 2011 - B7 Front Boundary Setbacks
- Warringah Development Control Plan 2011 - C1 Subdivision
- Warringah Development Control Plan 2011 - C3 Parking Facilities

Overall, the proposed development, notwithstanding proposed variations which are supported on merit, performs well against the relevant controls.

The proposed development promotes and facilitates the orderly development of land, and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment.

Accordingly, the proposal is recommended for approval.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

That Northern Beaches Council as the consent authority permits a contravention of Clause 4.1 Minimum Subdivision Lot Size development standard pursuant to clause 4.6 of the WLEP 2011 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2023/0569 for Demolition works, construction of a driveway and hardstand, and boundary adjustment. on land at Lot B DP 337679, 18 Daisy Street, DEE WHY, Lot A DP 337679, 16 Daisy Street, DEE WHY, subject to the conditions printed below:

Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
2023-SA01	Issue A	Site Analysis Plan	Freshwater Blue	May 2023
2023-DA01	Issue A	Prop Subdivision Plan	Freshwater Blue	May 2023
22160subdivision1	Issue 1	Plan Showing Proposed Subdivision of Lots A & B DP337679 No.16 & 18 Daisy Street Dee Why, NSW, 2099	C.M.S. Surveyors	20 February 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Waste Management Plan	N/A	Max Chipchase	8 May 2023

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

2. Compliance with Other Department, Authority or Service Requirements

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	26/06/2023 (on EDMS)

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

3. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifier for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and

- B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

4. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.

- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

 - (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
 - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
 - (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

FEES / CHARGES / CONTRIBUTIONS

5. Security Bond

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifier prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed

with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.northernbeaches.nsw.gov.au).

Reason: To ensure adequate protection of Council's infrastructure.

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

6. Vehicle Crossings Application

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing to service the car space for proposed Lot 1, which shall be 3 metres wide in accordance with Northern Beaches Council Standard Drawing A4/3330/1 N in accordance with Section 138 of the Roads Act 1993.

Note, driveways are to be in plain concrete only.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

A Council approval is to be submitted to the Certifier prior to the issue of the Subdivision Works Certificate.

Reason: To facilitate suitable vehicular access to private property.

7. Compliance with Standards

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards.

BEFORE ISSUE OF A SUBDIVISION WORKS CERTIFICATE

8. Utilities Services

Prior to the issue of the Subdivision Works Certificate, written evidence of the following service provider requirements must be provided to the Principal Certifier:

- a) a letter from Ausgrid demonstrating that satisfactory arrangements can be made for the installation and supply of electricity,
- b) a response from Sydney Water as to whether the proposed works subject to this consent would affect any Sydney Water infrastructure, and whether further requirements need to be met, and
- c) other relevant utilities or services - that the development as proposed to be carried out is satisfactory to those other service providers, or if it is not, the changes that are required to make the development satisfactory to them.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Subdivision Works Certificate.

Reason: To ensure relevant utility and service providers' requirements are provided to the

Principal Certifier.

9. Vehicle Crossings Application

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing to service the car space for proposed Lot 1, which shall be 3 metres wide in accordance with Northern Beaches Council Standard Drawing A4/3330/1 N in accordance with Section 138 of the Roads Act 1993.

Note, driveways are to be in plain concrete only.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

A Council approval is to be submitted to the Certifier prior to the issue of the Subdivision Works Certificate.

Reason: To facilitate suitable vehicular access to private property.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

10. Public Liability Insurance - Works on Public Land

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

DURING BUILDING WORK

11. Tree and Vegetation Protection

- a) Existing trees and vegetation shall be retained and protected, including:
 - i) all trees within the sites ,
 - ii) all trees and vegetation located on adjoining properties,
 - iii) all trees and vegetation within the road reserve.
- b) Tree protection shall be undertaken as follows:
 - i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,

- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
- ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

- c) The arboricultural works listed in a) and b) are undertaken and certified by an Arborist/Project Arborist as compliant to AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

12. Road Reserve

The applicant shall ensure the public footways and roadways adjacent to the site are maintained in a safe condition at all times during the course of the work.

Reason: Public safety.

13. Removing, Handling and Disposing of Asbestos

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- Work Health and Safety Act;

- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

14. Vehicle Crossings

The Applicant is to construct one vehicle crossing 3 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/ 1 N and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

A copy of the vehicle crossing inspection form is to be submitted to the Certifier.

Reason: To facilitate suitable vehicular access to private property.

15. Waste Management During Development

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

Details demonstrating compliance must be submitted to the Principal Certifier.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

16. Reinstatement of Kerb

The Applicant shall reinstate all redundant laybacks and vehicular crossings to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To facilitate the preservation of on street parking spaces.

17. Waste Management Confirmation

Prior to the issue of an Occupation Certificate, evidence / documentation must be submitted to the Principal Certifier that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

BEFORE ISSUE OF A SUBDIVISION CERTIFICATE

18. **Provision of Services for Subdivision**

The applicant is to ensure all services including water, electricity, telephone and gas are provided, located and certified by a registered surveyor on a copy of the final plan of subdivision.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Subdivision Certificate.

Reason: To ensure that utility services have been provided to the newly created lots.

19. **Sydney Water Compliance Certification**

The Applicant shall submit a Section 73 Compliance Certificate under the Sydney Water Act 1994 issued by Sydney Water Corporation. Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and fees to be paid. Please make early contact with the coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Subdivision Certificate.

Reason: To ensure compliance with the statutory requirements of Sydney Water.

20. **Subdivision Certificate Application**

The Applicant shall submit a Subdivision Certificate Application to Council, which is to include a completed Subdivision Certificate form and checklist, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919, the final plan of subdivision and all relevant documents including electronic copies. This documentation is to be submitted to Council prior to the issue of the Subdivision Certificate. All plans of survey are to show connections to at least two Survey Co-ordination Permanent Marks. The fee payable is to be in accordance with Council's fees and charges.

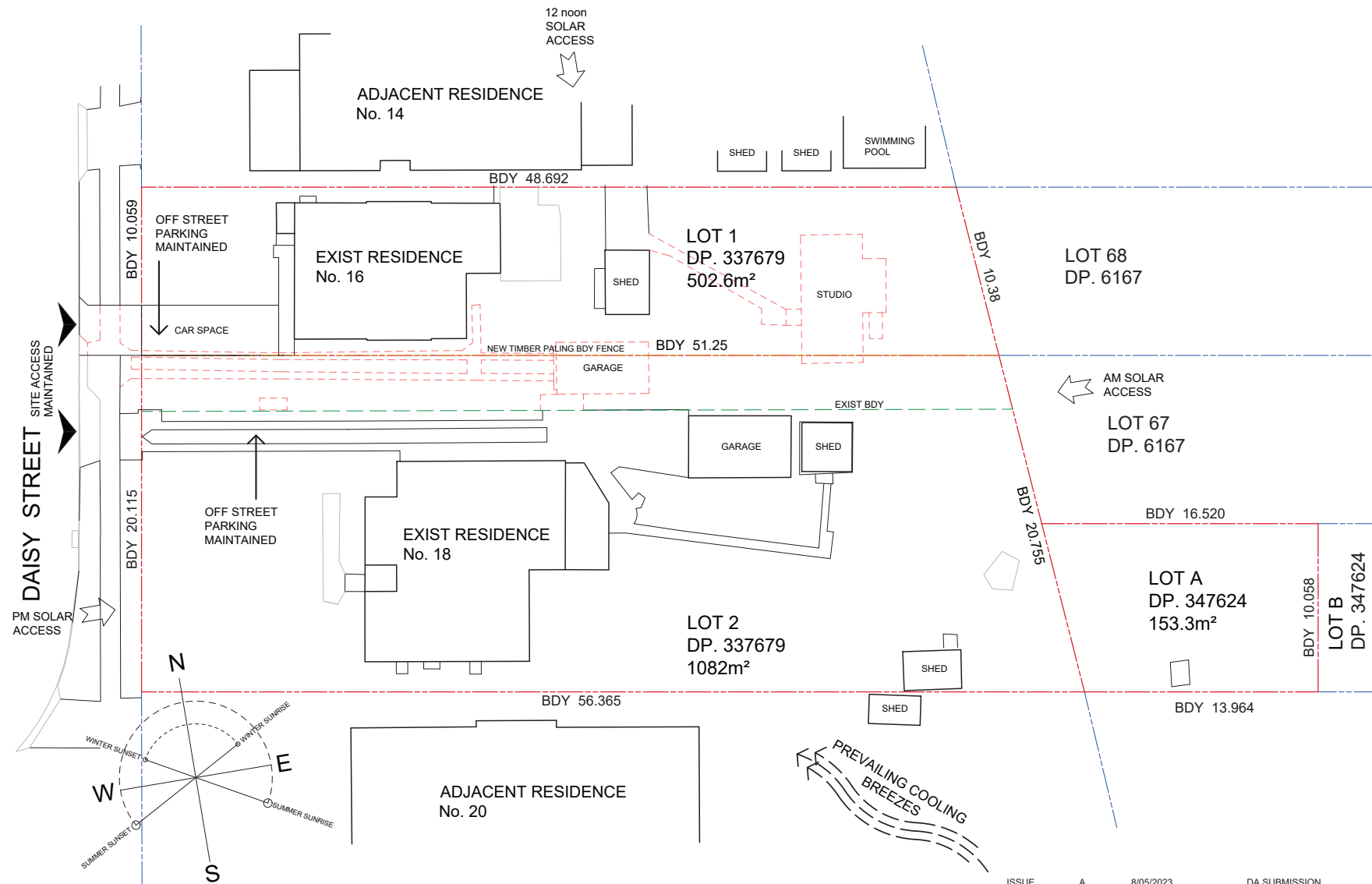
Reason: Statutory requirement of the Conveyancing Act 1919.

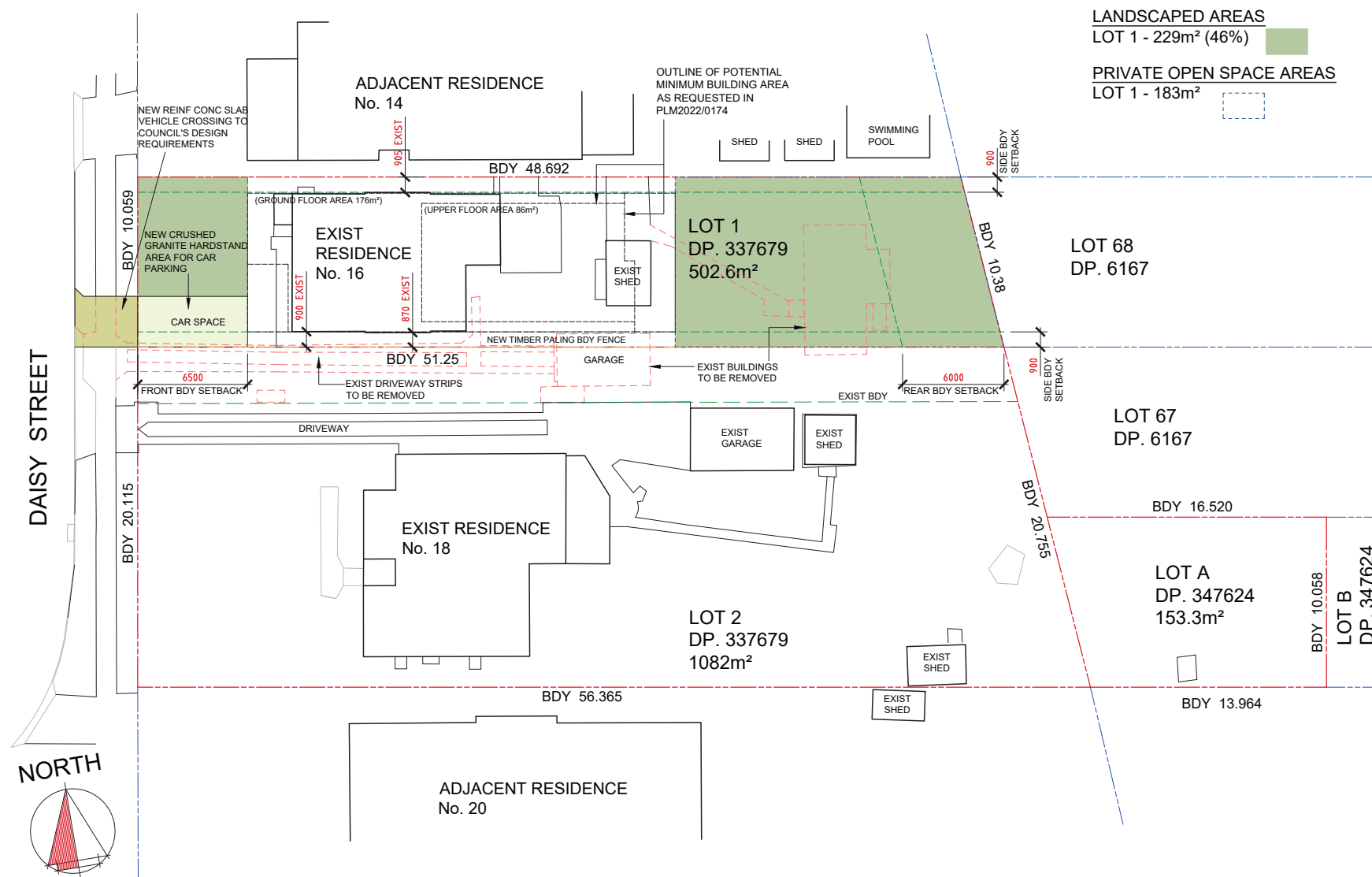
21. **Title Encumbrances**

The Applicant shall ensure all easements, rights of carriageway, positive covenants and restrictions as to user as detailed on the plans and required by the development consent are to be created on the title naming Council as the sole authority empowered to release or modify.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Subdivision Certificate.

Reason: To ensure proper management of land.





Clause 4.6 Variation

Proposed adjustment of existing boundary between subject properties
16 & 18 Daisy Street, Dee Why (Lot A & B 337679)

Objection pursuant to Clause 4.6 of the Warringah Local Environmental Plan 2011

The proposed adjustment of existing boundary between subject properties to provide revised allotment size

Variation of a development standard regarding the minimum subdivision lot size as detailed in Clause 4.1 of the Warringah Local Environmental Plan 2011

1.0 INTRODUCTION

The Clause 4.6 Exception to Development Standards request has been prepared in support of the proposed adjustment of existing boundary between properties at 16 & 18 Daisy Street, Dee Why. The properties are legally described as Lot A & B in Deposited Plan 337679.

The objection is made pursuant to the provisions of Clause 4.6 of the *Warringah Local Environmental Plan 2011*. In regard it is requested Council support a variation with respect to compliance with the minimum subdivision lot size as described in Clause 4.1 of the *Warringah Local Environmental Plan 2011* (hereafter WLEP 2011).

Clause 4.3 prescribes a numerical minimum lot size of 600m² on the subject site. The proposed lot sizes depart from this standard as demonstrated in **Part 2** of this variation request.

Clause 4.6 of the *Warringah Local Environmental Plan 2011* (WLEP 2011) enables consent for development to be granted even though it contravenes a development standard. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

As the following request demonstrates, flexibility may be afforded by Clause 4.6 because compliance with the height of buildings development standard is unreasonable or unnecessary in the circumstances of the case and there are sufficient environmental planning grounds to justify contravening the standard. This request also demonstrates that the proposal will be in the public interest, as the proposed development will be consistent with the objectives of the development standard and the zoning of the site.

The following sections of the report provide an assessment of the request to vary the development standards relating to 'minimum lot size' in accordance with Clause 4.6 of the WLEP 2011.

Consideration has been given to the following matters within this assessment:

- *Varying a development standard: A Guide*, prepared by the Department of Planning & Infrastructure dated August 2011.
- Relevant planning principals and judgements issued by the Land and Environment Court (hereafter L&E Court). The *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 2018* court judgement is the most relevant of recent case law.

His Honour of the L&E C in the above judgement:

The consent authority must, primarily, be satisfied the applicant's written request adequately addresses the 'unreasonable or unnecessary' and 'sufficient environmental planning grounds' tests:

"that the applicant's written request ... has adequately addressed the matters required to be demonstrated by cl 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case ... and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard ..."
[15]

On the 'Five Part Test' established under *Wehbe v Pittwater Council [2007] NSWLEC 827*:

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16 & 18 Daisy Street, Dee Why (Lot A & B 337679)

"The five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way..." [22]

That, in establishing 'sufficient environmental planning grounds', the focus must be on the contravention and not the development as a whole:

"The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole" [26]

That clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development:

"Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard will have a better environmental planning outcome than a development that complies with the development standard." [88]

This clause 4.6 variation has specifically responded to the matters outlined above and demonstrates that the request meets the relevant tests with regard to recent case law.

In accordance with the WLEP 2011 requirements, this Clause 4.6 variation request:

- identifies the development standard to be varied (**Part 2**);
- identifies the variation sought (**Part 2**);
- establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (**Part 3**);
- demonstrates there are sufficient environmental planning grounds to justify the contravention (**Part 3**);
- demonstrates that the proposed variation is in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out (**Part 3**);
- provides an assessment of the matters the secretary is required to consider before providing concurrence (**Part 3**); and
- Provides a conclusion summarising the preceding parts (**Part 4**).

2.0 VARIATION OF MINIMUM LOT SIZE STANDARD

The site comprises two (2) properties and the proposed boundary adjustment is permissible with development consent in the R2 Low Density Residential Zone, pursuant to the WLEP 2011.

Clause 4.1 restricts the minimum subdivision lot size of the locality and refers to the minimum lot size noted within the "Lot Size Map."

The relevant minimum lot size for this locality is 600m² and is considered to be a development standard as defined by Section 4 of the *Environmental Planning and Assessment Act 1979*.

Clause 4.6 Variation

Proposed adjustment of existing boundary between subject properties
16 & 18 Daisy Street, Dee Why (Lot A & B 337679)



Figure 1: Minimum lot size for subdivision map pursuant to WLEP 2011 (NSW Legislation, 2023)

The proposed development seeks to adjust the boundary between 16 & 18 Daisy Street 3.352m north. The proposed boundary realignment will enable adequate side setback from the existing property at 16 Daisy Street including demolition of the existing structures which conflict with the proposed boundary alignment including rear garage and studio.

The outcome will continue separated Torrens Title and provide revised allotment sizes to the two (2) properties.

The proposal creates a new allotment, proposing:

1. Lot 1 – 16 Daisy Street, Dee Why (502.6m² or 17.6% variation to Minimum Lot Size)
2. Lot 2 – 18 Daisy Street, Dee Why (1082m² = no variation)

The total site area of the current properties is 1,585m².

Clause 4.6 Variation

Proposed adjustment of existing boundary between subject properties
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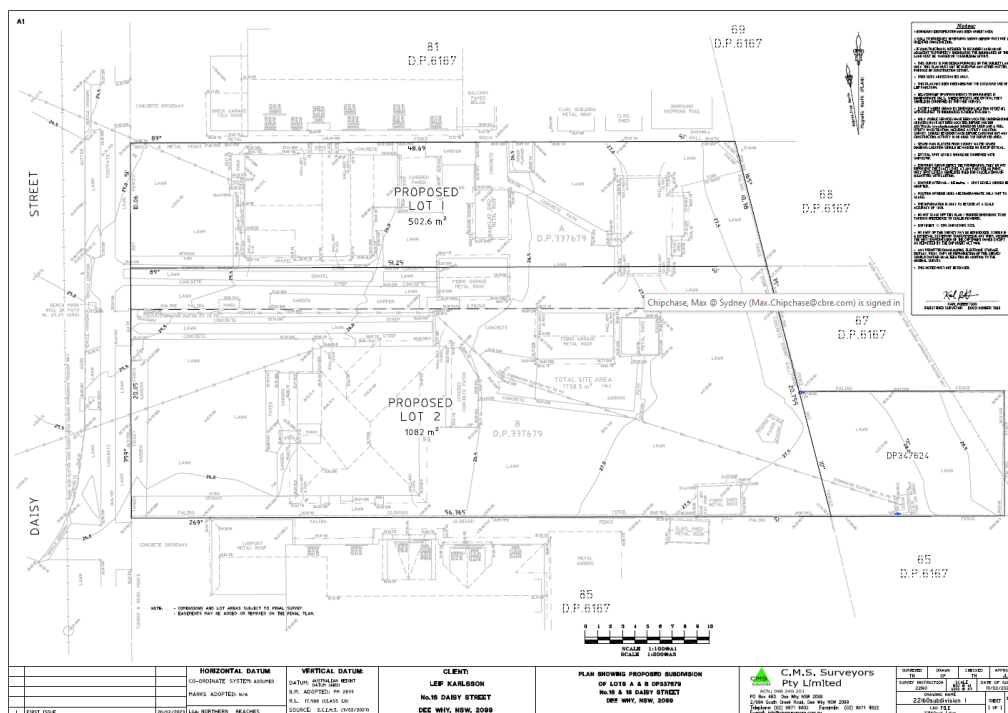


Figure 2: The proposed plan of subdivision which provides the realised boundary adjustment.

The proposed boundary adjustment will provide a breach to the minimum lot size development standard relating to the revised land area at 16 Daisy Street, Dee Why. Consequently, a breach to Clause 4.1 of the WLEP 2011. For the purpose of the submission, we have taken the view that the single departure may be administered under the one Clause 4.6 variation request.

Table 1. Minimum subdivision lot size variation				
Lot No (Address)	WLEP 2011 Clause	WLEP 2011 Development Standard requirement	Proposed Lot Size	Complies (Percentage of Variation)
Lot 1 (16 Daisy Street, Dee Why)	Clause 4.1 Minimum Subdivision Lot Size	600m ²	502.6m ²	97.4m ² (17.6%)

The controls of Clause 4.1 are considered to be a development standard as defined in the *Environmental Planning and Assessment Act, 1979*.

3.0 CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARD – MINIMUM LOT SIZE

The objectives of Clause 4.6 of the WLEP 2011 are as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Clause 4.6 Variation

Proposed adjustment of existing boundary between subject properties
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The proposal will achieve an outcome which reinforces the existing development pattern within the surrounding locality. The proposed boundary adjustment is consistent with the stated Objectives of the R2 Low Density Residential Zone, which is justified at Part 4.1.4.

At sub clause (2) *“development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.”*

Sub-clause (3) includes the requirement that a written request is provided by the applicant that seeks to justify the contravention of the standard.

Clause 4.6(3) provides that:

Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) That there are sufficient environmental planning grounds to justify contravening the development standard.*

Pursuant to sub-clauses (4) and (5), the consent authority needs to be satisfied that the request made by the applicant adequately addresses those matters at sub clause (3), (items (i) and (ii) above); and, that the proposal is within the public interest because it is consistent with the objectives of the particular standard; and, the objectives for development within the zone in which the development is proposed to be carried out.

Concurrence must be obtained from the Secretary. In deciding whether to grant concurrence, the Secretary must consider:

- a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- b) the public benefit of maintaining the development standard, and
- c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

Sub-clauses (6) and (8) are not relevant in the circumstances of this case and Clause (7) which refers to record keeping is a matter for Council to address.

These matters are considered below with respect to a proposed contravention to Clause 4.1 Minimum Subdivision Lot Size under *Warringah LEP 2011*.

This statement (or request) satisfies the first provision of Clause 4.6 in terms of the applicant making a written request to vary a development standard.

4.0 ASSESSMENT OF THE CLAUSE 4.6 VARIATION

The following sections of the Report provide a comprehensive assessment of the request to vary the development standards to minimum lot size in accordance with Clause 4.1 of the WLEP 2011. Detailed consideration has been given to the following matters within this assessment:

- *Varying development standard:* A guide, prepared by the Department of Planning and Infrastructure dated August 2011.
- Relevant planning principles and judgements issued by the L&E Court. The following sections of the report provides detailed responses to the key questions required to be addressed within the above documents and clause 4.6 of the WLEP 2011.

Clause 4.6 Variation

Proposed adjustment of existing boundary between subject properties
16 & 18 Daisy Street, Dee Why (Lot A & B 337679)

4.1 CONSIDERATION**4.1.1 Clause 4.6(3)(a) – Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?**

Compliance with this standard would be unreasonable given the established grid pattern which represent non-compliant minimum lot sizes adjacent to the site, along Daisy Street and Monash Parade and more broadly within the locality.

The proposal reinforces the existing development pattern on the subject site and with the surrounding area. The proposal is consistent with the objectives for development within the R2 zone, as well as maintaining that consistency within relevant components of the WDCP 2011. The size of the lots should not encumber the opportunity of this proposal.

It is considered that the proposal achieves the Objectives of Clause 4.1 and that the development is justified in this instance for the following reasons:

- The proposed development is generally consistent with the pattern, size and configuration of existing lots within the locality
- The proposal will effectively restore the lots to the former configuration as confirmed by Council
- The proposal will consistently align with the predominant lot pattern of the locality
- Based on the contextual analysis, the proposal will preserve the streetscape by aligning with the predominant street frontage lengths
- The proposed boundary realignment will inform the built form to correspond with the context in terms architectural language, massing and materials
- The proposal will encourage increased housing without impacting residential amenity

Clause 4.6 Variation

Proposed adjustment of existing boundary between subject properties
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Figure 3: Aerial map of existing lot/development pattern (SixMaps, 2021)

The proposal will result a numerical non-compliance of 17.6% to the minimum subdivision lot size map despite qualitative consistency with the lot pattern of the immediate and broader surrounds. Given its locality, the proposed subdivision will co-exist with its surrounds due to the proposals detailing to its existing nature. All existing lots located north of the site on Daisy Street are non-compliant with the Minimum Lot Size Development Standard.

It is considered that the proposal achieves the Objectives of Clause 4.1 and that the development is justified in this instance for the following reasons:

- The proposal will consistently align with the predominant lot pattern of the locality
- Based on the contextual analysis, the proposal will maintain the current built form corresponding with the context in terms architectural language, massing and materials
- The proposal will encourage housing diversity and affordability without affecting residential amenity

For the above reasons it would therefore be unreasonable and unnecessary to cause strict compliance with the standard. The character will be maintained and will be consistent with the prevailing lot pattern of the locality. The objectives of the R2 Low Density Residential Amenity zone will not be undermined because of the proposal.

In addition to the qualitative analysis, the below judgement is considered to further demonstrate the explicit circumstances of the case.

In the *Wehbe* judgment (*Wehbe v Pittwater Council* [2007] NSWLEC 827), Preston CJ expressed the view that there are 5 different methods in which a SEPP 1 Objection (previously applied) may be well-founded, and that

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Proposed adjustment of existing boundary between subject properties
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approval of the Objection may be consistent with the aims of the policy. These 5 questions may be usefully applied (does not need to establish all) to the consideration of Clause 4.6 variations:

- 1) *the objectives of the standard are achieved notwithstanding non-compliance with the standard;*

Comment: Yes. Refer to justification of proposed variation above which discusses the achievement of the objectives of the standard.

- 2) *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

Comment: It is considered that the purpose of the standard is relevant but the purpose is satisfied.

- 3) *the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

Comment: Compliance does not defeat the underlying object of the standard development; however, compliance would prevent the approval of an otherwise supportable proposal. Furthermore, it is noted that development standards are not intended to be applied in an absolute manner; which is evidenced by clause 4.6 (1)(a) and (b).

- 4) *the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*

Comment: Not applicable.

- 5) *the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Comment: The development standard is applicable to and appropriate to the zone.

With respect to the tests outlined above in Wehbe, we submit that it is unreasonable and unnecessary to strictly comply with Clause 4.1 for reasons related to (a) above in terms of consistency of the proposed development with the objectives of the development standard.

We further note in *NSWLEC Four2Five Pty Ltd Ashfield Council 2015*, Pearson C found that the reasons to justify any contravention should be particular to the circumstances of the site and development. This is not to say the wider reasons must be discounted. The submission is made on the basis of the circumstances of this particular site and wider environmental strategic and contextual planning grounds.

The objectives of the development standard are achieved notwithstanding the non-compliance (First Method)

The consistency with the objectives of the standard (Clause 4.1) are articulated and justified below:

- 1) *The objectives of this clause are as follows—*

- (a) *to protect residential character by providing for the subdivision of land that results in lots that are consistent with the pattern, size and configuration of existing lots in the locality,*

The proposal protects the residential character by restoring the lots to their previous form prior to the registration of DP 6167 in 1969. This validates that the proposed development will enable will return the residential character of these lots to be consistent with the prevailing lot pattern, size and configuration of its adjacent and lots in the locality. It is noted that these lots are the only properties which don't align with its adjacent and boundaries grid, of which the proposal seeks to correct.

Clause 4.6 Variation

Proposed adjustment of existing boundary between subject properties
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(b) to promote a subdivision pattern that results in lots that are suitable for commercial and industrial development,

The subdivision pattern results in lots which are suitable for the intended residential purposes with compliance maintained with the relevant controls.

(c) to protect the integrity of land holding patterns in rural localities against fragmentation,

The proposed development protects the integrity of the residential locality and reinforces the grid pattern of the locality. It is fortunate 16 & 18 Daisy Street are owned by the same owner including the lot behind 18 (Lot A DP 347624) which will be consolidated to enable future subdivision of the adjusted property at 18 Daisy Street which will be the subject of a subsequent DA. Therefore, the intended objective of the proposal is to return the lot pattern to its former state which protects and maintains the properties against what is currently fragmented.

(d) to achieve low intensity of land use in localities of environmental significance,

The site has no environmental significance and maintains the current low density residential use.

(e) to provide for appropriate bush fire protection measures on land that has an interface to bushland,

The site is not on an interface to bushland.

(f) to protect and enhance existing remnant bushland,

The proposal doesn't require the removal of trees.

(g) to retain and protect existing significant natural landscape features,

The proposed development retains and protects the existing significant natural landscape features.

(h) to manage biodiversity,

The site is not located on biodiversity affected land and will not pose any impacts to the biodiversity of the coastal locality.

(i) to provide for appropriate stormwater management and sewer infrastructure.

The proposed boundary realignment does not have implications to stormwater management and sewer infrastructure.

Accordingly, it is considered that the proposal is consistent with the objectives of the development standard.

4.1.2 Clause 4.6.(3)(b) Are there sufficient Environmental Planning Grounds to justify the contravening the development standard?

Clause 4.6(3)(b) of the WLEP 2011, requires the consent authority to be satisfied that the applicant's written request has adequately addressed clause 4.6(3)(b), by demonstrating:

"That there are sufficient environmental planning grounds to justify contravening the development standard".

The environmental planning grounds relied on in the written request under Clause 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as summarised in *(Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118)*.

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Proposed adjustment of existing boundary between subject properties
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The proposed development is supportable on environmental planning grounds for the following reasons:

- The proposal (notwithstanding the LEP contravention) is consistent with the objectives of the development standard as provided in clause 4.1 of the WLEP 2011.
- The departure to the minimum subdivision lot size standard will not introduce any significant adverse environmental or amenity related impacts on neighbouring properties.
- The proposed development is generally consistent with the pattern, size and configuration of existing lots to their form prior to registration of DP 6167 in 1969. At PLM2022/0174 minutes state:

"On this basis, Council staff and the Local Planning Panel would be likely to support the requested variation to the minimum lot size Proposed Lots 1 and 2."

Noting this application is for boundary realignment with subsequent DA to realise the proposal (long term objective) provided at the PLM.

- The proposal reinforces the existing development pattern on the subject site and within the surrounding area.
- The proposed means of the boundary realignment, necessitating a breach to the minimum lot size standard, be more consistent with the Objects of the Act in terms of promoting the orderly development of land.
- The proposed use is consistent with the existing and desired character of the area.
- Will enable the provision for future subdivision of the site to meet the long-term objective of the site.
- The dwellings can adequately be serviced with independent access into the site.
- The proposal will not result in any unreasonable residential amenity, protecting the existing high-level of amenity of adjoining occupiers.
- The proposed development is in accordance with Council's strategic plans in providing a housing typology which will set the foundation additional housing and increases housing to the community.

Having regard to the above, it is considered there are sufficient environmental planning grounds to justify a variation of the development standard for minimum subdivision lot size.

Accordingly, in regard to the proposed development at 16 & Daisy Street, Dee Why, the following environmental planning grounds are considered to be sufficient to allow Council to be satisfied that a variation to the development standard can be supported:

- The variation to the minimum subdivision lot size is inconsequential as it is of negligible impact to the streetscape and the amenity of neighbouring properties.

The above are the environmental planning grounds which are the circumstance which are particular to the development which merit a variation to the development standard.

4.1.3 Clause 4.6 (4)(a)(i) Has the written request adequately addressed the matters in sub-clause?

Clause 4.6(4)(a)(i) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

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Proposed adjustment of existing boundary between subject properties
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Each of the sub-clause (3) matters are comprehensively addressed in this written request, including detailed consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. The written request also provides sufficient environmental planning grounds, including matters specific to the proposal and the site, to justify the proposed variation to the development standard.

4.1.4 Clause 4.6(4)(a)(ii) Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and objectives for development within the zone in which development is proposed to be carried out?

Clause 4.6(4)(a)(ii) provides that development consent must not be granted for development that contravenes a development standard unless the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

In Part 4.1.1 of this request, it was demonstrated that the proposal is consistent with the objectives of the development standard. The proposal, inclusive of the non-compliance, is also consistent with the objectives of the R4 High Density Zone:

- *To provide for the housing needs of the community within a low density residential environment.*

The proposal provides a permissible housing typology which offers future increased housing to the community. The proposed development supports the North District Plan and Northern Beaches Local Housing Strategy by providing additional housing within the existing capacity of current land use planning controls.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The outcome of the proposal will allow additional housing within a highly accessible location close to facilities and services that residents reasonably require.

The site sits within an established residential area in walking distance to local neighbourhoods shops at Dee Why Beach front. The site is located approximately 1.2m from Dee Why Town Centre, conveniently located close to every day needs and services as well as connectively to local and regional bus network.

- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

The proposed development will not introduce any significant adverse environmental or amenity related impacts on neighbouring properties. Rather, the current high level of residential amenity of the site will be maintained. The site is in an established residential locality, with no natural or cultural heritage associations to the area. The proposal keeps in accordance with its desired future character through its connection to its history, proposing to correct the allotment size as per the traditional types of dwellings which dominate its surrounding locality.

Accordingly, it is considered that the site may be developed with a variation to the prescribed minimum subdivision lot size standard, whilst maintaining consistency with the zone objectives. Therefore, the proposal is considered to be in the public interest.

4.1.5. Clause 4.6(5)(a) – Would Non-Compliance Raise any Matter of Significance for State or Regional Planning?

The proposed non-compliance with the minimum subdivision lot size development standard will not raise any matter of significance for State or regional environmental planning.

Clause 4.6 Variation

Proposed adjustment of existing boundary between subject properties
16 & 18 Daisy Street, Dee Why (Lot A & B 337679)

4.1.6. Clause 4.6(5)(b) – Is There a Public Benefit of Maintaining the Planning Control Standard? The proposed development achieves the objectives of the minimum lot size development standard and the land use zoning objectives.

It would not be in the public interest to strictly maintain the standard in the particular circumstances of this case since strict adherence to the standard would make it impossible for the allotment to correspond with the existing grid pattern of the locality. The proposed boundary adjustment is restoring the lot to its pre-existing form resulting in a lot which is generally consistent with the pattern, size and configuration of existing lots within the locality.

The proposed development achieves the objectives of the development standard and the objectives of the land use zoning objectives and is therefore considered in the public benefit. The proposal provides additional housing stock, contributing to mix and increased housing within the existing capacity of the current land use planning controls currently set by Council.

4.1.7. Clause 4.6(5)(c) – Are there any other matters required to be taken into consideration by the Secretary before granting concurrence?

There are no known additional matters that need to be considered within the assessment of the clause 4.6 Request and prior to granting concurrence, should it be required.

4.0 CONCLUSION

This written request has been prepared in relation to the proposed variation to a development standard contained in Clause 4.1 of WLEP 2011. The request explains that, despite the proposed variation, the development satisfies the objectives of the standard and the objectives of the Low-Density High Density R2 Zoning (Wehbe-way 1).

The request also explains that it is unreasonable or unnecessary to require strict compliance with development standard in circumstances where there are no significant/unreasonable adverse impacts from the variation and important planning goals are better achieved by allowing the variation. In addition, the request demonstrates that there are sufficient site-specific environmental planning grounds to justify the variation, and therefore the proposal is in the public interest.

Given the above justification provided above this Clause 4.6 Variation is well founded and should be favourably considered by Council.

ITEM 5.4**DA2023/0972 - MANLY NATIONAL 22 CENTRAL AVENUE,
MANLY - ALTERATIONS AND ADDITIONS TO A MIXED USE
BUILDING.****AUTHORISING MANAGER Adam Richardson****TRIM FILE REF 2023/574061****ATTACHMENTS**
1 [↓ Assessment Report](#)
2 [↓ Site Plans & Elevations](#)
3 [↓ Clause 4.6](#)**PURPOSE**

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2023/0972 for alterations and additions to a mixed use building on land at Lot CP SP 7114, 22 Central Avenue, MANLY subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0972
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Responsible Officer:	Megan Surtees
Land to be developed (Address):	Lot CP SP 7114, 22 Central Avenue MANLY NSW 2095
Proposed Development:	Alterations and additions to a mixed use building.
Zoning:	Manly LEP2013 - Land zoned E1 Local Centre OLDManly LEP2013 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Proprietors of Strata Plan 7114 & 13245
Applicant:	The Owners Sp7114

Application Lodged:	21/07/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Other
Notified:	31/07/2023 to 14/08/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 71.6%
Recommendation:	Approval

Estimated Cost of Works:	\$ 660,000.00
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EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a mixed use building, specifically the replacement of solid balustrades to balconies with glazed balustrades.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to part of the balustrading being to balconies above the 25 metres height limit, which results in a variation to the development standard by more than 10% (with a maximum 71.6% variation proposed). The 4.6 request for the non-compliance with height standard arises from the proposed glass balustrades replacing existing concrete balustrades along the eastern elevation. There is no increase to the maximum height of the building.

The application was publicly notified between 28 July 2023 to 11 August 2023, and no submissions were received during this time.

This report concludes with a recommendation that the NBLPP grant **approval** to the development application, subject to recommended conditions.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development seeks consent to demolish the existing concrete balustrades to each balcony on the eastern elevation and and replace these with glass balustrades, with a maximum height of 1.2 metres.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Local Environmental Plan 2013 - 6.11 Active street frontages
 Manly Local Environmental Plan 2013 - 6.13 Design excellence
 Manly Local Environmental Plan 2013 - 6.16 Gross floor area in Zone B2
 Manly Development Control Plan - 4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)

SITE DESCRIPTION

Property Description:	Lot CP SP 7114 , 22 Central Avenue MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western side of Central Avenue.</p> <p>The site is regular in shape with a frontage of 90.73m along</p>

Central Avenue and a depth of 31.2 metres. The site has a surveyed area of approximately 2782.0m².

The site is located within the E1 Local Centre zone within the *Manly Local Environmental Plan 2013* (MLEP 2013) and accommodates a multi-storey mixed-use shop top housing development, with businesses located on the ground floor level and Council-owned carparking on the next four levels. The remaining levels are used for residential purposes.

The site is located on a flat block with an easterly orientation. There are various pedestrian entry points along the ground floor level along both the eastern and western elevations.

The site is not known to have any threatened species.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by mixed-use developments, residential flat buildings, commercial businesses along The Corso. Manly Oval is located a short distance away to the west of the subject site.

Map:



SITE HISTORY

The land has been used for mixed-use shop-top housing purposes for an extended period of time. A search of Council's records has revealed that multiple development applications have been lodged, primarily relating to the use of business premises.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	<p>See discussion on “Environmental Planning Instruments” in this report.</p> <p>The NSW employment zones reforms have been made and will come into force on 26 April 2023. These reforms will result in this property changing from a B2 Local Centre zone to an E1 Local Centre zone. The proposed use of the building does not change under this development application. The existing use will remain, and be permissible in the new zone.</p>
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p>Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a recommended condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home</p>

Section 4.15 Matters for Consideration	Comments
	<p>Building Act 1989. This matter has been addressed via a recommended condition of consent.</p> <p>Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a recommended condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 31/07/2023 to 14/08/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments					
Building Assessment - Fire and Disability upgrades	<p>Supported, subject to conditions.</p> <p>The application has been investigated with respects to aspects relevant the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>					
NECC (Development Engineering)	<p>Supported, subject to conditions.</p> <p>The proposal does not require any change to the existing drainage system. There is limited availability for parking adjoining the site so a construction traffic management plan has been conditioned.</p> <p>Development Engineering support the proposal, subject to conditions as recommended.</p>					
NECC (Flooding)	<p>Supported, without conditions</p> <p>The property is partially affected by the Medium Flood Risk Precinct. The proposed development relates to modifying the existing balcony balustrades, which are above the FPL. This is compliant with Section 5.4.3 of the Manly DCP.</p>					
Strategic and Place Planning (Heritage Officer)	<p>Supported, without conditions</p> <table><tr><th>HERITAGE COMMENTS</th></tr><tr><td>Discussion of reason for referral</td></tr><tr><td><p>This application has been referred as the site is within the vicinity of a number of heritage items:</p><p>1231 - Congregational Church, Sydney Road (corner of Whistler Street) 1234 - Group of 5 commercial buildings, 39-47 Sydney Road, Manly 1255 - Electricity substation No 15009, 34A-36 Whistler Street, Manly 1254 - St Mary's Church presbytery and school, Whistler Street (corner Raglan Street), Manly</p><p>The site also adjoins the C2 Town Centre Conservation Area to the south</p></td></tr><tr><td>Details of heritage items affected</td></tr><tr><td><p>Details of the closest heritage item (and a State item), as contained within the Heritage Inventory, are:</p><p>1255 - Electricity substation No 15009, 34A-36 Whistler Street, Manly</p><p>The Manly Zone Substation is a well detailed electricity substation</p></td></tr></table>	HERITAGE COMMENTS	Discussion of reason for referral	<p>This application has been referred as the site is within the vicinity of a number of heritage items:</p> <p>1231 - Congregational Church, Sydney Road (corner of Whistler Street) 1234 - Group of 5 commercial buildings, 39-47 Sydney Road, Manly 1255 - Electricity substation No 15009, 34A-36 Whistler Street, Manly 1254 - St Mary's Church presbytery and school, Whistler Street (corner Raglan Street), Manly</p> <p>The site also adjoins the C2 Town Centre Conservation Area to the south</p>	Details of heritage items affected	<p>Details of the closest heritage item (and a State item), as contained within the Heritage Inventory, are:</p> <p>1255 - Electricity substation No 15009, 34A-36 Whistler Street, Manly</p> <p>The Manly Zone Substation is a well detailed electricity substation</p>
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Internal Referral Body	Comments	
	<p>building still in service for its original purpose. It is an excellent and externally intact representative example of the Interwar Art Deco style and is the last remaining known asset constructed by the Manly Electric Supply Company. It was subsequently acquired and extended by the Municipal Council of Manly. It is representative of the transition period from private to public electricity in the early 20th century in Sydney's Northern Beaches area.</p>	
	Other relevant heritage listings	
	SEPP (Biodiversity and Conservation) 2021	No Comment if applicable
	Australian Heritage Register	No
	NSW State Heritage Register	Yes Electricity Substation in Whistler Street is State listed
	National Trust of Aust (NSW) Register	No
	RAIA Register of 20th Century Buildings of Significance	No
	Other	No
	Consideration of Application	
	<p>This application proposes alterations and additions to an existing multi-storey mixed-use building, consisting of the replacement of balcony balustrades on the eastern facade (Level 11 and above). This work involves removal of the upper concrete component of the balustrade and installation of a BCA compliant glass balustrade.</p> <p>These works will not increase the bulk or scale of this building and they will have a negligible impact upon views of the building from surrounding heritage items and the Manly Town Centre Conservation Area. As the works are only on the eastern facade, there will be no visibility from the surrounding heritage items, however being the tallest building in the area, it is visible from beyond the immediate vicinity. Nevertheless it is considered that the visual impact of this change is negligible on surrounding heritage items and areas.</p> <p>Therefore, no objections are raised on heritage grounds and no conditions required.</p> <p>Consider against the provisions of CL5.10 of MLEP 2013: Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? N/A Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? N/A</p>	

Internal Referral Body	Comments
Strategic and Place Planning (Urban Design)	<p>Supported, without conditions.</p> <p>This advice is provided as an internal referral from the Urban Design Unit to the Development Assessment Officer for consideration and coordination with the overall assessment.</p> <p>The application seeks consent for alterations and additions to an existing mixed-use development. The works involve demolition of the existing concrete balustrades and installation of new glass balustrades to all the existing balconies. The proposed changes to the facade will be minor and will not have any major impact on the surrounding developments and general streetscape.</p> <p>Urban Design raises no objection to the proposed works.</p>
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p>Supported, subject to conditions.</p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP 65 - Design Quality of Residential Apartment Development

Clause 4 of State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment Development (SEPP 65) stipulates that:

(1) This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:

(a) the development consists of any of the following:

- (i) the erection of a new building,
 - (ii) the substantial redevelopment or the substantial refurbishment of an existing building,
 - (iii) the conversion of an existing building, and
- (b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and
- (c) the building concerned contains at least 4 or more dwellings.

The building to which this application relates is a mixed-use building, comprising commercial development on the ground floor level, with multiple levels of public carparking and the remaining levels comprising residential accommodation pursuant to SEPP No. 65. However, and with regard to Clause (1)(a)(iii), the replacement of the concrete balustrades with glass balustrades is not considered to constitute the substantial redevelopment or refurbishment of the existing building (as indicated in Figure 1. below, the change is not easily or readily discernible when viewed from nearby public and private places). Furthermore, the actual building mass of the building is no changing. The extent of works within the context of the building as a whole are minor and, therefore, does not constitute a substantial refurbishment of the building in any way.

As such, SEPP No. 65 is not considered to apply, despite the building being a mixed-use development in the context of that policy.



Figure 1. Existing concrete balustrades (left) and proposed glass balustrades (right) (Source: Urbaine Architecture).

SEPP (Building Sustainability Index: BASIX) 2004

The proposed development does not trigger the need for a BASIX Certificate in accordance with the

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, as there are no changes to the existing window and door schedule of the building.

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

- 1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:
 - a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
 - b) coastal environmental values and natural coastal processes,
 - c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
 - d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
 - e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,

- f) Aboriginal cultural heritage, practices and places,
- g) the use of the surf zone.

Comment:

This Clause applies to the subject site. As the proposed works are sited entirely to the residential portion of the existing building, the assessment has found that the proposed works can achieve the matters as prescribed within the above Clause.

- 2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:
 - a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or
 - b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

This Clause applies to the subject site. As the proposed works are sited entirely to the residential portion of the existing building, the assessment has found that the proposed works can achieve the matters as prescribed within the above Clause.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
 - a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - i) existing, safe access to and along the foreshore, beach, headland or rock
 - ii) platform for members of the public, including persons with a disability,
 - iii) overshadowing, wind funnelling and the loss of views from public places to
 - iv) foreshores,
 - v) the visual amenity and scenic qualities of the coast, including coastal headlands, Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and
 - b) is satisfied that:
 - i) the development is designed, sited and will be managed to avoid an
 - ii) adverse impact referred to in paragraph (a), or
 - iii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or if that impact cannot be minimised—the development will be managed to mitigate that impact, and
 - c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

This Clause applies to the subject site. As the proposed works are sited entirely to the residential portion of the existing building, the assessment has found that the proposed works can achieve the

matters as prescribed within the above Clause.

Division 5 General

2.12 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

The proposed development will not increase risk of coastal hazards.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential and use.

Manly Local Environmental Plan 2013

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	25m	42.9m	71.6%	No
Floor Space Ratio	FSR: 3:1	No change	N/A	N/A
Gross floor area in Zone B2	25% Commercial GFA, maximum 1000sqm per premises	No change	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No

Clause	Compliance with Requirements
4.6 Exceptions to development standards	Yes
5.21 Flood planning	Yes
6.9 Foreshore scenic protection area	Yes
6.11 Active street frontages	Yes
6.13 Design excellence	Yes
6.16 Gross floor area in Zone B2	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Clause 4.3 Height of buildings
Requirement:	25m
Proposed:	42.89m
Percentage variation to requirement:	71.56%



Figure 2. Proposed maximum height of building.

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

Clause 4.6 Exceptions to development standards:

(1) The objectives of this clause are as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Comment:

Clause 4.3 – Height of Buildings development standard is not expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Secretary has been obtained.*

Clause 4.6 (4)(a)(i) (Justification) assessment:

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

Comment:

The Applicant's written request has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The applicants written request argues, in part:

- *'The objectives of the MLEP2013 Height of Building control are achieved notwithstanding the technical non-compliance.*
- *The objectives of the MLEP2013 E1 Local Centre zone are achieved notwithstanding the technical non-compliance.*
- *The compliance with the development standard is both unreasonable and unnecessary given the existing building height is retained and the works are below the existing roof line.*
- *There are sufficient environmental planning grounds to support the proposed variation.*
- *The proposal does not impact existing solar access to private and public places.*
- *The breach in building height will not be noticeable and will have no adverse impacts on neighbouring properties. The proposal will not result in a building of an unacceptable bulk and scale.*

- *Despite the variation to the Height of Building control which occurs due to the existing building, the proposed development is considered to be in keeping with the desired future character of the locality.*
- *The proposal has been strategically designed to minimise the impact and bulk and scale of the project.*
- *The project architects have designed a new compliant balcony balustrade noting the existing non-compliant design and the existing bulk and scale of the area; therefore, the proposal will not result in any unreasonable visual impact on the Manly streetscape and locality.*
- *The proposed development will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing noting the building height remains as existing. Therefore, this written submission is considered to be compliant with the Statutory Provisions prescribed both under MLEP2013 and the provisions of Clause 4.6 which permit a variation to a development standard.*
- *It is acknowledged that the purpose of Clause 4.6 is to provide an appropriate degree of flexibility in applying certain development standards. In this regard the Height of Building of the site should be assessed on a greater numerical figure, noting the sites constraints and the unique nature of the locality in a varying degree of development types.*
- *By providing flexibility in this regard, the subject proposal is capable of achieving a better development and design outcome which adequately caters for residential needs within the Northern Beaches LGA in particularly the Manly precinct.*
- *The compliance with the development standard is both unreasonable and unnecessary given the existing building height is retained and the works are below the existing roof line.*
- *The proposal is for alterations and additions to the existing mixed-use development on the residential component of the building which does not change the existing maximum building height for the site. It is important to acknowledge that the building existing is over the 25m maximum height allowance and that the proposed works are below that existing on the site. There is no further variation to that existing.*
- *...the works are considered to be inconsequential to that existing and purely relate to the replacement of balustrades on the balconies.*
- *It is noted that notwithstanding the existing breach to the building height, other properties within the Manly LGA have similar breaches, and the approval would not result in significant impacts to the bulk and scale of Manly. It is important for Council to acknowledge the existing streetscape and built form of 22 Central Avenue, as existing. The proposed works relate to cosmetic alterations and additions that are consistent with the desired future streetscape of the locality.*
- *Sufficient environmental planning grounds exist to justify the height of buildings variation namely the retention of the existing building height noting that the proposal will not alter the existing variation on site.*
- *There would be no public benefit in maintaining the development standard in this instance for the following reasons:*
 - *the variation to the Height of Building development standard does not give rise to any adverse environmental impacts. As such, the maintenance of the development standard in this specific instance would not provide any public benefit and would hinder the orderly and economic development of the site.*
 - *maintaining the development standard, in the context of this site, would be inconsistent with the objectives of the zone, and the Act, as it would be inconsistent with the surrounding developments.*
 - *the breach to the development standard is existing and not exacerbating through the proposal.'*

The Applicant's written request to vary the numeric requirement of Clause 4.3 Height of Buildings of the Manly Local Environmental Plan 2013 (MLEP 2013) is considered to be acceptable given the proposed resultant built form will remain unchanged to what is existing, and will be commensurate with the surrounding and nearby residential developments. The proposed development and the existing site constraints mean that strict compliance with this development standard is considered to be

unreasonable and unnecessary as the residential portion of the building extends beyond the prescribed maximum height of 25.0 metres.

The proposed external works (being the replacement of the existing concrete balustrade with glass balustrades that meet the BCA requirements) does not increase or extend the built form further above the maximum building height. Therefore, the contravention to the maximum building height will not be discernible from adjoining and nearby public and private places, and will not adversely or unreasonably impact upon the character of Manly Town Centre, nor will it result in unreasonable amenity impacts to adjoining public and private places.

Notwithstanding the numerical non-compliance, the building mass does not change and will remain commensurate with surrounding developments within the Manly Town Centre and surrounds. In this instance, the overall building height will not adversely or unreasonably impact upon the existing character of the streetscape of Central Avenue or the Corso, which is within close proximity to the subject site.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

Clause 4.6 (4)(a)(ii) (Public Interest) assessment:

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the E1 Local Centre zone within the Manly Local Environmental Plan 2013 (MLEP 2013). An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the MLEP 2013 are:

(1) The objectives of this clause are as follows:

a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,

Comment:

The proposed development retains the existing building height, bulk and scale and is therefore consistent as existing with the prevailing heights and roof forms. It is noted that notwithstanding the existing breach to the building height, this application and proposed works to the balcony balustrades are below the existing maximum building height for the building, therefore the works are considered to be inconsequential to that existing and purely relate to the replacement of balustrades on the balconies. It is noted that notwithstanding the existing breach to the building height, other properties within the Manly LGA have similar breaches, and the approval would not result in significant impacts to the bulk and scale of Manly.

b) to control the bulk and scale of buildings,

Comment:

The proposal has been strategically designed by the project architect to be the replacement of the existing concrete balustrade with a new glass balustrade only. It is noted that the existing concrete balustrade does not comply with the Building Code of Australia, therefore the proposal is required to ensure compliant balconies for the site. The proposal will not have an adverse visual impact and will not disrupt views, privacy or have amenity impacts to neighbouring properties. It is therefore considered that the bulk and scale of the existing building is retained.

c) to minimise disruption to the following:

- (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
- (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
- (iii) views between public spaces (including the harbour and foreshores),*

Comment:

The proposal relates to alterations and additions externally in the form of replacing the existing concrete balustrade, and does not extend the existing building mass. The proposal will have no impact to views from both adjoining properties and public spaces.

d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

Comment:

The proposal relates to alterations and additions externally in the form of replacing the existing concrete balustrade, and does not extend the existing building mass. The proposal will have no impact to views from both adjoining properties and public spaces.

e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Comment:

This objective is not applicable to the subject site as it is not in a recreation or environmental protection zone.

Zone objectives

The underlying objectives of the E1 Local Centre zone are:

- *To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.*

Comment:

The existing building is mixed-use with commercial business located on the ground floor level, public carparking and residential accommodation in the remaining building. The proposed development does not seek to change the mixed-use of the building.

- *To encourage investment in local commercial development that generates employment opportunities and economic growth.*

Comment:

As above, the proposed development does not interfere with the existing commercial businesses. Therefore, opportunities to encourage investment in local development shall remain, and thus contribute to employment opportunities and economic growth within the Manly Town Centre.

- *To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.*

Comment:

As above, the proposed development does not interfere with the existing residential portion of the building. Therefore, the proposal will continue to enable residential development that contributes to the vibrant and active Manly local centre and remain consistent with the strategic planning for the Manly Town Centre.

- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*

Comment:

The existing commercial and business uses of the ground floor tenancies will not change under this development application.

- *To minimise conflict between land uses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery.*

Comment:

The existing land use is not proposed to change under this development application.

- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*

Comment:

The existing street frontages of the subject site will remain under this development application.

- *To create urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment.*

Comment:

The proposed development will be an appropriate scale within the context of the existing building and the adjoining and nearby land uses. The replacement of the existing concrete balustrades with glass balustrades that meet the BCA requirements will be an appropriate architectural treatment. Any landscaping on the subject site will not change as a result of the proposed development.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the E1 Local Centre zone.

Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the Local Planning Panel.

6.9 Foreshore scenic protection area

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters:

- (a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,*
- (b) measures to protect and improve scenic qualities of the coastline,*
- (c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,*
- (d) measures to reduce the potential for conflict between land-based and water-based coastal activities.*

Comment:

The assessment has found that the proposed development achieves the abovementioned matters as prescribed within this Clause.

6.11 Active street frontages

Under this clause, development consent must not be granted to the erection of a building, or a change of use of a building, on land to which this clause applies unless the consent authority is satisfied that the building will have an active street frontage after its erection or change of use.

Comment:

The proposed development does not involve the erection of a new building, or a change of use to the existing building. As such, the existing building will continue to provide an active street frontage.

6.13 Design excellence

This Clause applies to the subject site. As such, the following is to be considered:

(3) Development consent must not be granted for development to which this clause applies unless the consent authority considers that the development exhibits design excellence.

(4) In considering whether development exhibits design excellence, the consent authority must give consideration to whether the development:

- (a) contains buildings that consist of a form, bulk, massing and modulation that are likely to*
- (b) is likely to protect and enhance the streetscape and quality of the public realm, and*
- (c) clearly defines the edge of public places, streets, lanes and plazas through separation*
- (d) minimises street clutter and provides ease of movement and circulation of pedestrian,*
- (e) encourages casual surveillance and social activity in public places, streets, laneways and*
- (f) is sympathetic to its setting, including neighbouring sites and existing or proposed built*
- (g) protects and enhances the natural topography and vegetation including trees, escarpments*
- (h) promotes vistas from public places to prominent natural and built landmarks, and*
- (i) uses high standards of architectural design, materials and detailing appropriate to the*
- (j) responds to environmental factors such as wind, reflectivity and permeability of surface*
- (k) coordinates shared utility infrastructure to minimise disruption at street level in public spaces*

Comment:

The proposed development does not seek to alter the built form in such a way that changes the form, bulk, massing and modulation of the building. The overshadowing is existing and will not change as a result of the proposal. Furthermore, the proposal does not adversely impact upon the existing streetscape or nearby public places and plazas, nor does it impact upon the definition of the building in its relationship to the edge of public places, streets, lanes and plazas as the proposal does not involve structurally enhancing the built form. The proposal does not contribute to street clutter or impact upon ease of movement and circulation around the building for pedestrians, bicyclists and vehicles, and service areas. Casual surveillance is maintained. The proposal is sympathetic to its setting and site context with no unreasonable or adverse impacts upon neighbouring sites or the natural topography of the site (the site has no trees, escarpments or other significant natural features). The proposed replacement of the concrete balustrades with glass balustrades will promote a high architectural design with appropriate materials for the building type and location. However, to ensure the glass is not reflective, a condition will be recommended to require non-reflective glass so as to limit unreasonable glare upon adjoining and nearby public and private places. Finally, the proposed works are not sited on the ground floor level, therefore there is no disruption to the public spaces on the street level.

6.16 Gross floor area in Zone B2

While this Clause applies to the subject site, the proposed development does not involve any changes to the existing gross floor area of the building. In this instance, the assessment has found that the subject site will continue to provide for viability in the E1 Local Centre zone and will continue to allow for the diversity of business activities which will contribute to the economic growth, retention of local services and employment opportunities in the Manly Local Centre.

Manly Development Control Plan

Built Form Controls

Due to the zoning, there are no specific numeric built form provisions to consider. Rather, consideration is to be given to the design for townscape under 4.2.5 Manly Town Centre and Surrounds, as prescribed within the MDCP.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres)	Yes	Yes
4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)	No	Yes
4.2.3 Setbacks Controls in LEP Zones B1 and B2	Yes	Yes
4.2.5 Manly Town Centre and Surrounds	Yes	Yes
4.2.5.1 Design for Townscape	Yes	Yes
4.2.5.2 Height of Buildings: Consideration of Townscape Principles in determining exceptions to height in LEP Zone B2 in Manly Town Centre	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes
Schedule 2 - Townscape Principles	Yes	Yes

Detailed Assessment

4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)

The building height variation is discussed within this report under section Clause 4.6 Exceptions to Development Standards of MLEP 2013.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$6,600 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$660,000.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the *Manly Local Environmental Plan 2013* seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
- b) There are sufficient environmental planning grounds to justify the contravention.

2) The proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

PLANNING CONCLUSION

This proposal, for alterations and additions to a mixed use building has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to the maximum building height of 42.9 metres, which results in a variation to the development standard by more than 10% (being 71.6%).

The application was publicly notified between 29 July to 11 August 2023. During this period, no submissions were received.

The critical assessment issues Clause 4.3 Height of Building, Clause 4.6 Exceptions to development standards, Clause 6.9 Foreshore scenic protection area, Clause 6.11 Active street frontages, Clause 6.13 Design Excellence, Clause 6.16 Gross floor area in Zone B2 of the MLEP 2013; and, control 4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2).

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for **approval**. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

That Northern Beaches Council as the consent authority permits a contravention of clause 4.3 Height of Building development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2023/0972 for Alterations and additions to a mixed use building. on land at Lot CP SP 7114, 22 Central Avenue, MANLY, subject to the conditions printed below:

Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
A001b	N/A	Demolition	Urbaine Architecture	16 May 2023
A001c	N/A	New Proposal	Urbaine Architecture	16 May 2023
A002	N/A	Existing to Demolish	Urbaine Architecture	16 May 2023
A003	N/A	New Balustrade Proposal	Urbaine Architecture	16 May 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Waste Management Plan	N/A	Not signed	Not dated
Fire Safety Statement	N/A	Tony Strati (Building Manager)	27 February 2023
Building Code of Australia - Compliance Assessment Report for DA Submission	N/A	AED Group	6 July 2023

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

2. Compliance with Other Department, Authority or Service Requirements

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	[INSERT]

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

3. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifier for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,

- (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

4. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
 - 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,
 - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times

until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;
- Relevant legislative requirements and relevant Australian Standards (including but not limited) to:
- (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$6,600.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$660,000.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

6. **Security Bond**

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifier prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.northernbeaches.nsw.gov.au).

Reason: To ensure adequate protection of Council's infrastructure.

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. **Traffic Management and Control**

The Applicant is to submit an Implement Traffic Control application for a Construction Traffic Management Plan to Council for approval prior to issue of the Construction Certificate. The Construction Traffic Management Plan shall be prepared to TfNSW standards by an appropriately certified person.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process.

8. **Building Code of Australia Requirements**

The Building Code of Australia requirements for the building as detailed and recommended in the Compliance Assessment Report prepared by AEG, dated 6/7/2023, Report No. 7375_R02_Final, are to be considered as part of the assessment for any Construction Certificate. Details demonstrating compliance are to be provided to the Certifying Authority, prior to the issue of a Construction Certificate.

Reason: To ensure adequate provision is made for Health, Amenity, access and Fire safety for building occupant health and safety.

9. **Compliance with Standards**

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards.

10. **Sydney Water "Tap In"**

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifier demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website www.sydneywater.com.au for:

- "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

Reason: To ensure compliance with the statutory requirements of Sydney Water.

DURING BUILDING WORK

11. **Road Reserve**

The applicant shall ensure the public footways and roadways adjacent to the site are maintained in a safe condition at all times during the course of the work.

Reason: Public safety.

12. **Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

13. **Demolition Works - Asbestos**

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be

disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifier, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

14. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier when the external structure of the building is complete.

Reason: To demonstrate the proposal complies with the approved plans.

15. **Traffic Control During Road Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (<http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf>) and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

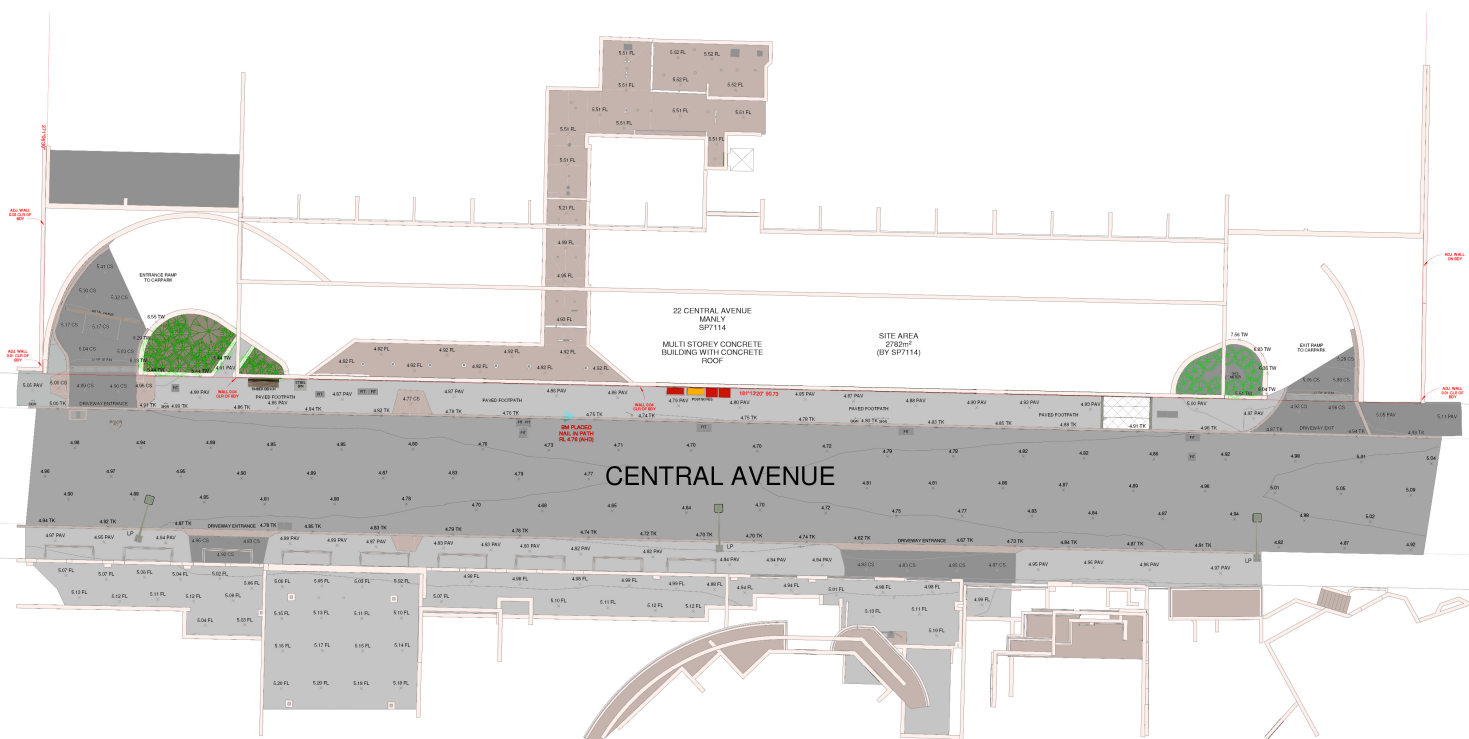
Reason: Public Safety.

16. **Waste Management During Development**

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

Details demonstrating compliance must be submitted to the Principal Certifier.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.



1 SURVEY PLAN
1 : 100

- | LEGEND: | | | |
|---------|-----------------------|-----|------------------|
| AHD | AUSTRIAN HEIGHT DATUM | PV | PAVERS |
| AWN | AWNING | PP | POWER POLE |
| BM | BENCH MARK | RD | REDUCED LEVEL |
| CONC | CONCRETE | RR | ROOF RIDGE |
| CS | CONCRETE SURFACE | RS | RAILS |
| DC | DRAINAGE CUTTING | SC | SCAFFOLD COVER |
| DOOR | DOOR | SV | STOP VALVE |
| EG | EDGE OF CONCRETE | TEL | TELESTRA PIT |
| FC | FINISH FLOOR HEIGHT | TK | TOP OF KERB |
| FL | FLOOR LEVEL | TW | TOP OF WALL |
| GDN | GARDEN | TV | SERVICE VALVE |
| HYD | HYDRANT | VC | VEHICLE CROSSING |
| I | INVERT LEVEL | VS | WATER VALVE |
| LH | LOW HEIGHT | W | WINDOW SILL |
| NS | NATURAL SURFACE | | |

NOTE: THIS SURVEY WAS COMPLETED USING LASER SCANNING TECHNOLOGY AND CONVENTIONAL SURVEY EQUIPMENT. THE DATA WAS ACCURATE AT TIME OF SURVEY.

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PARTIAL DETAIL & IDENTIFICATION SURVEY.
FLOOR PLAN, ELEVATIONS & 3D MODEL OF
SP7114 AT
22 CENTRAL AVENUE MANLY

INSTRUCTING PARTY: URBAIN ARCHITECTURE

Revision No.	Description	Date
01	PARTIAL DETAIL/IDENT SURVEY, FLOOR PLAN, ELEVATIONS & 3D MODEL	03/04/2023
02		
03		

MARK ANTHONY REID
(REGISTERED SURVEYOR)
SURVEYOR ID No. SU000183

SECOND SEARCHES (7 MODIFICATIONS) AS SEARCHED ON 11/06/2021

1. RESERVATIONS AND CONDITIONS IN THE CROWN GRANTS;
2. ACQUISITION OF INTEREST IN BROADBAND BAYVIEW PTY LIMITED
3. THE PART SHOWN HATCHED IN PLAIN WITH A/366203
COMMENCE: 28/11/2020. EXPIRES: 20/11/2025.
4. ATTENTION IS DIRECTED TO CLAUSE 3 SCHEDULE 4 STRATA SCHEMES
5. SHOULD DEVELOPERS BE INTERESTED IN PURCHASING BAYVIEW
LOTS AND COMMON PROPERTY IN STRATA SCHEMES
REGISTERED BEFORE 1-7-1974
6. (DISCLOSE LEASE TO OR FOR SALE PTY LIMITED (THE PART(S)
SHOWN HATCHED IN PLAIN WITH A/366203. EXPIRES: 13/2/2025.
7. AM585411 LEASE TO TELSTRA CORPORATION LIMITED OF THE PART
SHOWN HATCHED IN PLAIN WITH AM585411
EXPIRES: 18/12/2031. OPTION PERIOD: 5 YEARS AND TWO FURTHER
OPTIONS OF 5 YEARS.
8. AM585411 INITIAL PERIOD EXPIRES
18/06/2020. COVENANT OF: REGISTERED BY LAWY

NOTES

A) SERVICES SHOWN HAVE BEEN DERIVED FROM VISUAL EVIDENCE APPARENT AT THE TIME OF SURVEY. SERVICES MAY EXIST WHICH ARE NOT SHOWN. THE RELEVANT SERVICE AUTHORITY SHOULD BE CONTACTED TO OBTAIN THE EXISTING SERVICE LOCATIONS AND DEPTHS PRIOR TO THE COMMENCEMENT OF ANY CONSTRUCTION OR EXCAVATION.

B) DIAMETER, HEIGHT & SPREAD OF TREES ARE APPROXIMATE ONLY.

C) LEVELS SHOWN ARE OF AUSTRALIAN HEIGHT DATA.

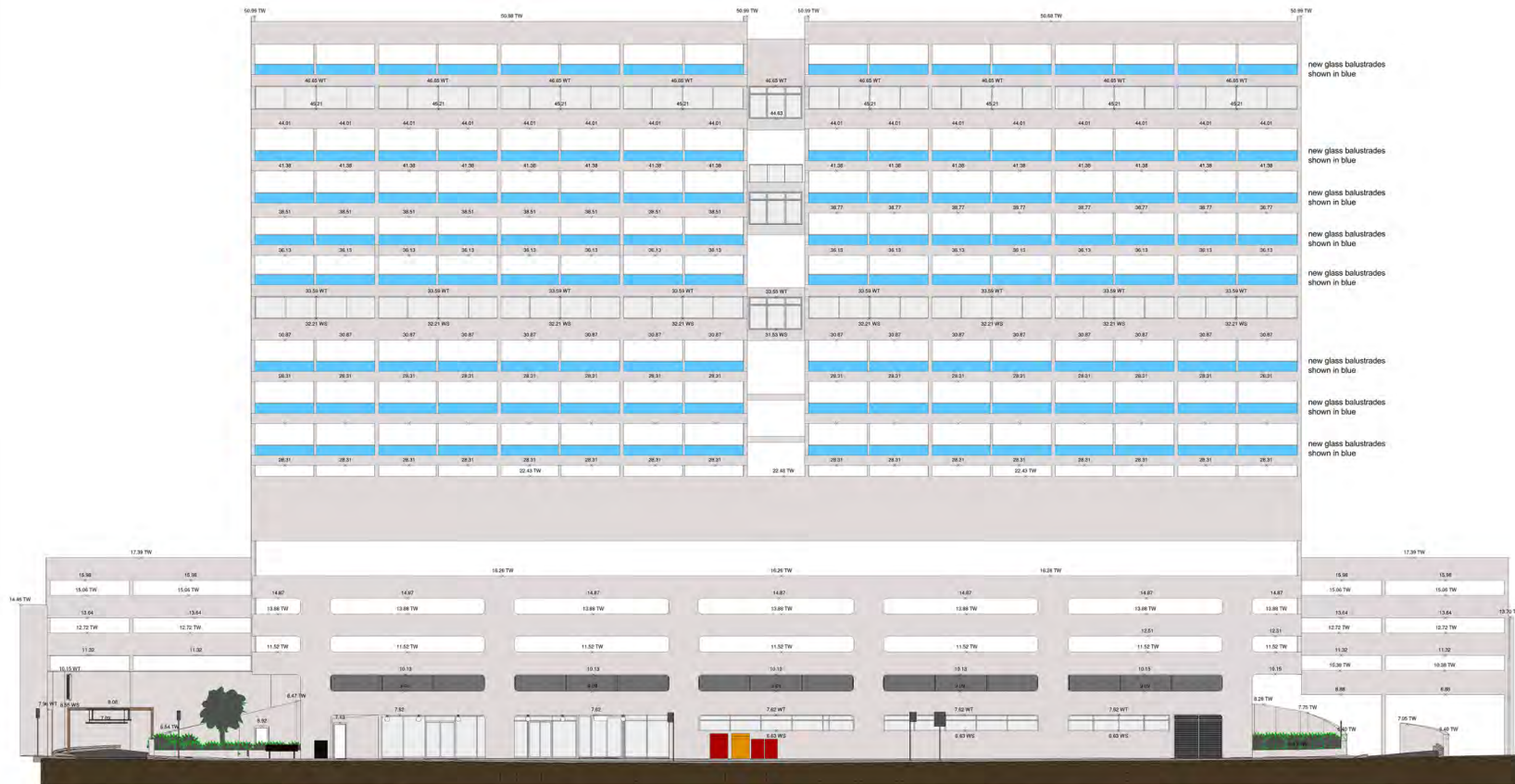
D) MASONRY LEVELS (PM20) RL 4.375 (HATCH, GLASS LB).

E) USE STATE DIMENSIONS; DO NOT SCALE.

F) THESE NOTES FORM PART OF THIS PLAN AND CANNOT BE REMOVED.

G) NO COVENANTS AND/OR RESTRICTIONS HAVE BEEN INVESTIGATED.

BY & A SURVEYORS PTY LTD.			
DATUM:	AHD	SURVEYED BY:	TS
SURVEY DATE:	22/03/2023	DRAWN BY:	EC
DATE DRAWN:	23/03/2023	SCALE:	1 : 100@A0
REFERENCE:	20595-23	SHEET:	2 OF 6



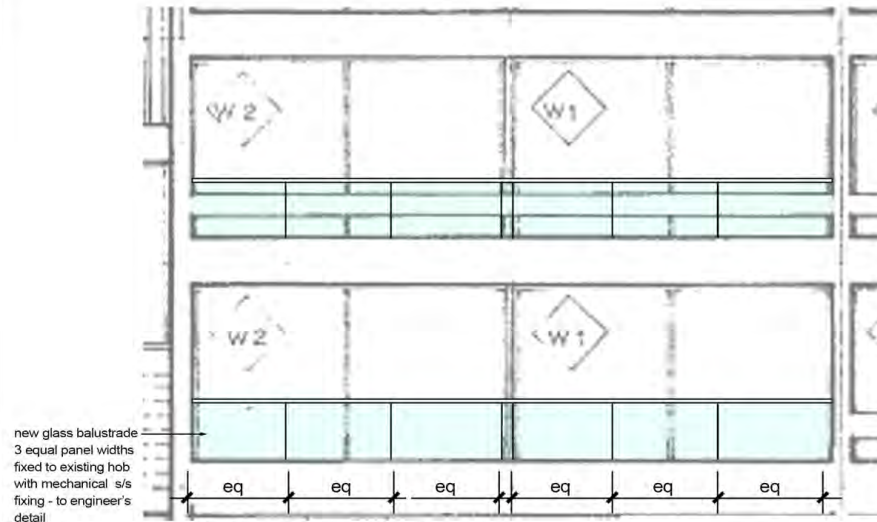
1 22 CENTRAL AVENUE FRONT FACADE
1:250

NEW PROPOSAL
new glass balustrades shown in blue

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SHEET NAME:	EAST ELEVATION	DATE:	16/5/2023
OWNER AND PROJECT LOCATION:	The Owners Corporation SP7114 22 Ground Floor, 22, Central Avenue, Manly NSW	DRAWN BY:	Author
		SHEET NUMBER:	A001c
		SCALE:	1:250

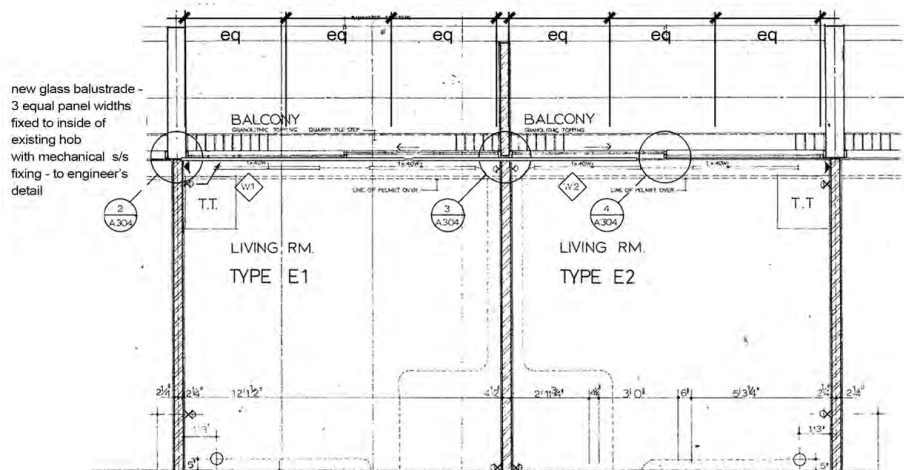
urbaine
ARCHITECTURE
urbaine pty ltd, 6/15, The Corso, Manly, NSW 2095 Tel: 02 8355 6770



2 STOREY TYPICAL ELEVATION @ 1:50

Elements to be demolished indicated in red hatching overlay.
This applies to all resident floors as shown in DWG00

ALL DIMENSIONS TO BE CONFIRMED ON SITE

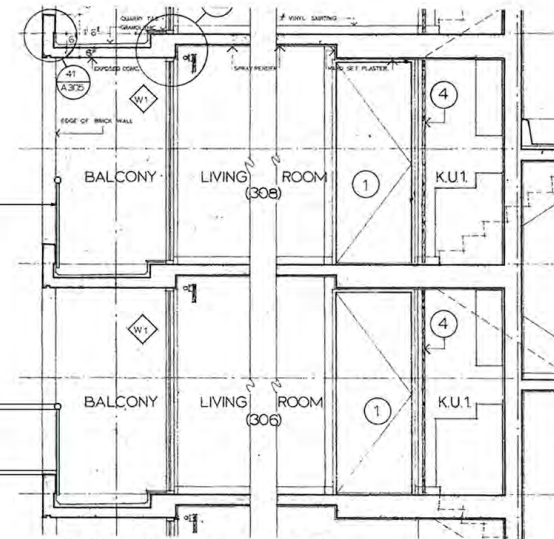


2 APARTMENT TYPICAL PLAN @ 1:50

Elements to be demolished indicated in red hatching overlay.
This applies to all resident floors as shown in DWG00

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SHEET NAME: NEW BALUSTRADE PROPOSAL	
OWNER AND PROJECT LOCATION:	The Owners Corporation SP7114 22 Ground Floor, 22, Central Avenue, Manly NSW

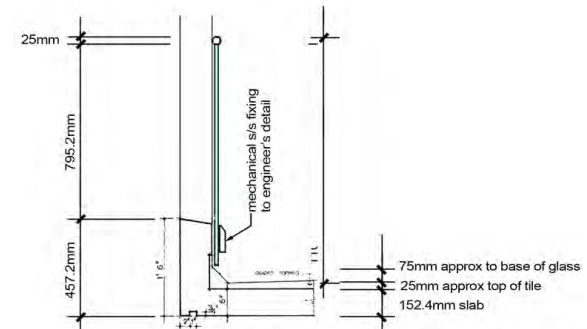


2 STOREY TYPICAL SECTION @ 1:50

Elements to be demolished indicated in red hatching overlay.
This applies to all resident floors as shown in DWG00

new glass balustrade
3 equal panel widths
fixed to existing hob
with mechanical s/s
fixing - to engineer's
detail

handrail - 25mm
to engineer's detail
overall height above
tiles 1100mm
gap from base of
glass to top of tiles



PROPOSED BALUSTRADE - DETAIL SECTION @ 1:20

Elements to be added.
This applies to all resident floors as shown in DWG00

DATE:	16/5/2023
DRAWN BY:	Author
SHEET NUMBER:	A003
SCALE:	Various

urbaine
ARCHITECTURE
urbaine Pty Ltd, 6/15, The Corso, Manly, NSW 2095 Tel: 02 8355 6770



**WRITTEN REQUEST PURSUANT TO
CLAUSE 4.6 OF MANLY LOCAL
ENVIRONMENTAL PLAN 2013**

**VARIATION OF A DEVELOPMENT
STANDARD REGARDING THE HEIGHT OF
BUILDINGS AS DETAILED IN CLAUSE 4.3
OF MANLY LOCAL ENVIRONMENTAL
PLAN 2013**

**Alterations and Additions to Existing
Mixed-Use Building at 22 Central
Avenue, Manly NSW 2095**

✉ mathew@fourtowns.com.au

☎ 0425232018

www.fourtowns.com.au

PO Box 361, Balgowlah NSW 2093

Alterations and Additions to Existing Mixed-Use Development

This report has been prepared to support a Development Application under the *Environmental Planning and Assessment Act 1979*.

Report prepared by:

Mathew Quattroville
Director – Four Towns Pty Ltd

Report prepared for:

The Owners Corporation SP7114

18 July 2023

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Alterations and Additions to Existing Mixed-Use Development

Introduction

This objection is made pursuant to the provisions of Clause 4.6 of Manly Local Environmental Plan 2013. In this regard, it is requested Council support a variation with respect to compliance with the maximum building height of a building as described in Clause 4.3 of the Manly Local Environmental Plan 2013 (MLEP 2013). It is noted that this request is made for the proposed alterations and additions at 22 Central Avenue, Manly.

The following assessment of the variation to Clause 4.3 – Building Height development standard, has taken into consideration the recent judgement contained within Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582, Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61, and RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130.

Requirement	25m
Proposed	Proposed works under existing building height – 42.9m Existing building height to remain – 45.7m
Is the planning control in question a development standard?	Yes
Is the non-compliance with to the clause requirement a numerical/or performance based variation?	Numerical
If numerical enter a % variation to requirement	71.6%

The proposal must satisfy the objectives of Clause 4.3 – Height of Buildings, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the MLEP 2013. The proposal is consistent with surrounding developments and the proposed variation is compatible with the locality and complies with other relevant controls which determine the built form of the site.

A variation to the strict application of the Height of Building standard is considered appropriate for the subject site and is supportable for the following reasons:

- The objectives of the MLEP2013 Height of Building control are achieved notwithstanding the technical non-compliance.
- The objectives of the MLEP2013 E1 Local Centre zone are achieved notwithstanding the technical non-compliance.
- The compliance with the development standard is both unreasonable and unnecessary given the existing building height is retained and the works are below the existing roof line.
- There are sufficient environmental planning grounds to support the proposed variation.
- The proposal is consistent with the existing bulk and scale of the area.
- The proposal has no adverse impacts to views or view corridors.
- The proposal does not impact existing solar access to private and public places.
- The breach in building height will not be noticeable and will have no adverse impacts on neighbouring properties. The proposal will not result in a building of an unacceptable bulk and scale.

Alterations and Additions to Existing Mixed-Use Development

Clause 4.6 Variation Requirements

The grounds of objection are based upon the various tests of the recent judgements in the *NSW Land and Environment Court Case Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*, *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130* and review the following:

Compliance being unreasonable or unnecessary

1. Compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: *Wehbe v Pittwater Council at [42] and [43]*.
2. The underlying objective or purpose of Clause 4.3(2) is not relevant to the development with the consequence that compliance is unnecessary. *Wehbe v Pittwater Council at [45]*
3. The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable. *Wehbe v Pittwater Council at [46]*
4. The development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the stand is unnecessary and unreasonable: *Wehbe v Pittwater Council at [47]*.
5. The relevance of the zoning provisions of the land to which the development is proposed.

Sufficient environmental planning grounds

1. First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard"
2. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31]*

Is the proposed development in the public interest?

The Consent Authority must be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of:

- a. the particular development standard;
- b. the zone in which the development is proposed to be carried out.

Secretary's Concurrence

Under clause 4.6(5), in deciding whether to grant concurrence, the Secretary must consider the following matters:

- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) *the public benefit of maintaining the development standard, and*
- (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

Alterations and Additions to Existing Mixed-Use Development

General Provisions Relating to Clause 4.6 which will be applicable to Clause 4.3(2) Height of Building**4.6 Exceptions to development standards**

(1) *The objectives of this clause are as follows—*

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

(4) *Development consent must not be granted for development that contravenes a development standard unless—*

- (a) the consent authority is satisfied that—*
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Planning Secretary has been obtained.*

(5) *In deciding whether to grant concurrence, the Planning Secretary must consider—*

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.*

(6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—*

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Note— *When this Plan was made it did not include all of these zones.*

(7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*

(8) *This clause does not allow development consent to be granted for development that would contravene any of the following—*

- (a) a development standard for complying development,*

Alterations and Additions to Existing Mixed-Use Development

- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
- (c) clause 5.4.*

Comment: As detailed previously in this request, Clause 4.6 of MLEP2013 is applicable to enable a variation to the Height of Building to permit Northern Beaches Council power to grant development consent to the subject development.

This proposal involves a departure from the Height of Building control of MLEP2013, a formal variation to this standard is required under *Clause 4.6 – Exceptions to Development Standards*. This provision allows consent to be granted for a development even though it would contravene a development standard imposed by this or any other planning instrument.

The provisions of Clause 4.6, which the consent authority must have regard to in determining whether a development that contravenes a development standard should be supported, includes the following:

- *That compliance with the development standard is unreasonable and unnecessary in the circumstances of the case; Cl 4.6 (3)(a)*
- *That there is sufficient environmental planning grounds to justify contravening the development standard; Cl 4.6 (3) (b)*
- *The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out: Cl 4.6 (4)(a)(ii)*
- *The public benefit of maintaining the development standard, and Cl 4.6 (5)(b)*
- *Any other matters required to be taken into consideration by the Planning Secretary before granting concurrence Cl 4.6 (5)(c)*

4.3 Height of buildings

(1) The objectives of this clause are as follows—

- (a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
- (b) to control the bulk and scale of buildings,*
- (c) to minimise disruption to the following—*
 - (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
 - (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
 - (iii) views between public spaces (including the harbour and foreshores),*
- (d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
- (e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

Alterations and Additions to Existing Mixed-Use Development

Comment: It is acknowledged that the proposed development does not comply with clause 4.3 (2) and accordingly there is a requirement to submit a Clause 4.6 Variation. This Clause 4.6 seeks an exemption to the development standard as prescribed under the MLEP2013 and demonstrates that compliance with the provisions of clause 4.3 (2) is both unreasonable and unnecessary. The proposed development meets the required steps that are set out in the relevant NSW Land and Environment Court decisions to justify that the standard can be varied to achieve the subject proposal.

The development standard in Clause 4.3 (2) of the MLEP2013, is amendable to variation. The purpose of this Clause 4.6 is to vary the Height of Building as a building height referable to the building to give Council the power to grant development consent to the non-compliant purposes. This proposition is reinforced by the following:

Clause 4.3 (2) states:

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the [Height of Buildings Map](#).

The Height of Building Map sets a maximum Height of Building control of 13m. For the purpose of calculating Height of Building, the MLEP2013 provides the following definition:

Building height is defined as follows:

building height (or height of building) means—

(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

ground level (existing) means the existing level of a site at any point.

It is noted that Northern Beaches Council now refers to the leading case authority which considers the definition of “ground level (existing) *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, which insists that the ground level (existing) is measured from the **excavated** ground level (within the footprint of the existing building) to the highest point of the proposal directly above. It is noted that the Court accepted (at [74]) that there is an ‘environmental planning ground’ that may justify the contravention of the height standard under ‘clause 4.6’ when the prior excavation of the site (within the footprint of the existing building) distorts the maximum building height plane. This falls hand in hand with the original leading case *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070.

The Height of Building in clause 4.3(2) of the MLEP2013 is a development standard in accordance with the definition set out below:

Development standards’ is defined in section 1.4 of the EP&A Act 1979 as:

development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which **requirements are specified or standards are fixed** in respect of any aspect of that development,

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including, but without limiting the generality of the foregoing, requirements or standards in respect of:

(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,

Despite the variation to the Height of Building control which occurs due to the existing building, the proposed development is considered to be in keeping with the desired future character of the locality. The proposal has been strategically designed to minimise the impact and bulk and scale of the project. The project architects have designed a new compliant balcony balustrade noting the existing non-compliant design and the existing bulk and scale of the area; therefore, the proposal will not result in any unreasonable visual impact on the Manly streetscape and locality.

The proposed development will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing noting the building height remains as existing. Therefore, this written submission is considered to be compliant with the Statutory Provisions prescribed both under MLEP2013 and the provisions of Clause 4.6 which permit a variation to a development standard.

Objection to Development Standard – Height of Building (Clause 4.3(2))**Compliance being unreasonable or unnecessary**

1. Compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the stand: *Wehbe v Pittwater Council* at [42] and [43].

Comment: Clause 4.6(3)(a) of the MLEP2013 states that the proposed variation to the development standard must demonstrate that compliance with the development standard is ‘*unreasonable or unnecessary in the circumstances of the case*’.

In determining a merits-based assessment for the Height of Building of the development due consideration has been given to the above objectives and the planning principles set by the Land and Environment Court of NSW, Planning Principle – *Veloshin v Randwick Council* [2007] NSWLEC 428.

It is acknowledged that the purpose of Clause 4.6 is to provide an appropriate degree of flexibility in applying certain development standards. In this regard the Height of Building of the site should be assessed on a greater numerical figure, noting the sites constraints and the unique nature of the locality in a varying degree of development types. The proposed works do not alter the existing building height and are located under the roof line which is maintained, therefore it is submitted that the development is reasonable despite the variation to the development standard. Given the proposed application is consistent with similar approvals granted in the area, Council’s assessment should be focused on this numerical allowance as opposed to the variation to the specific standard. By providing flexibility in this regard, the subject proposal is capable of achieving a better development and design outcome which adequately caters for residential needs within the Northern Beaches LGA in particularly the Manly precinct. As noted under the review of Clause 4.3 within the Statement of Environmental Effects, the proposal is consistent with the objectives of Clause 4.3, as outlined below:

- The objectives of the MLEP2013 Height of Building control are achieved notwithstanding the technical non-compliance.
- The objectives of the MLEP2013 E1 Local Centre zone are achieved notwithstanding the technical non-compliance.

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- The compliance with the development standard is both unreasonable and unnecessary given the existing building height is retained and the works are below the existing roof line.
- There are sufficient environmental planning grounds to support the proposed variation.
- The proposal is consistent with the existing bulk and scale of the area.
- The proposal has no adverse impacts to views or view corridors.
- The proposal does not impact existing solar access to private and public places.
- The breach in building height will not be noticeable and will have no adverse impacts on neighbouring properties. The proposal will not result in a building of an unacceptable bulk and scale.

As outlined above, the proposed development is consistent with the underlying objectives of the Height of Building standard, notwithstanding the proposed variation. Given the modified state of the site, through this application the permissible Height of Building control does not align with the existing height on the site, nor several built form controls of the MDCP. This essentially limits any redevelopment potential of the site without varying Council's standard.

The underlying objective or purpose of Clause 4.3 is not relevant to the development with the consequence that compliance is unnecessary. *Wehbe v Pittwater Council at [45]*

Comment: The proposal is for alterations and additions to the existing mixed-use development on the residential component of the building which does not change the existing maximum building height for the site. It is important to acknowledge that the building existing is over the 25m maximum height allowance and that the proposed works are below that existing on the site. There is no further variation to that existing.

The proposal includes demolition works to delete the existing concrete balustrades and replace them with glass balustrades. The maximum building height for the proposed works is 42.9m (71.6% variation) which is above the maximum building height of 25m. It is noted that the building height breach is existing and not impacted by the proposed alterations and additions.

The proposal does not increase the building footprint, nor does it extend the building height as existing. The proposal is supported and in our opinion is consistent with the objectives of the Clause, as outlined below:

(a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality

Comment: The proposed development retains the existing building height, bulk and scale and is therefore consistent as existing with the prevailing heights and roof forms. It is noted that notwithstanding the existing breach to the building height, this application and proposed works to the balcony balustrades are below the existing maximum building height for the building, therefore the works are considered to be inconsequential to that existing and purely relate to the replacement of balustrades on the balconies. It is noted that notwithstanding the existing breach to the building height, other properties within the Manly LGA have similar breaches, and the approval would not result in significant impacts to the bulk and scale of Manly. It is important for Council to acknowledge the existing streetscape and built form of 22 Central Avenue, as existing. The proposed works relate to cosmetic alterations and additions that are consistent with the desired future streetscape of the locality.

(b) to control the bulk and scale of buildings,

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Comment: The proposal has been strategically designed by the project architect to be the replacement of the existing concrete balustrade with a new glass balustrade only. It is noted that the existing concrete balustrade does not comply with the Building Code of Australia, therefore the proposal is required to ensure compliant balconies for the site. The proposal will not have an adverse visual impact and will not disrupt views, privacy or have amenity impacts to neighbouring properties. It is therefore considered that the bulk and scale of the existing building is retained.

The excerpt below of the eastern elevation shows the proposed works and the existing building height of the entire building. The proposal has been strategically designed to maintain the existing bulk and scale of the streetscape. The excerpt below shows the proposed balustrades in blue which are below the existing building height.



(c) to minimise disruption to the following—

- (i) views to nearby residential development from public spaces (including the harbour and foreshores),
- (ii) views from nearby residential development to public spaces (including the harbour and foreshores),
- (iii) views between public spaces (including the harbour and foreshores),

Comment: The proposal relates to alterations and additions externally in the form of replacing the existing concrete balustrade. The proposal will have no impact to views from both adjoining properties and public spaces.

(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

Comment: The proposal relates to alterations and additions externally in the form of replacing the existing concrete balustrade. The proposal will have no impact to solar access from both adjoining properties and public spaces.

(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

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Comment: Not applicable – the site is not located within a recreation or environmental protection zone.

It is our professional opinion that the building by virtue of its height, bulk and scale, is consistent with the locality and desired character of the area. We have formed the considered opinion that the project is a sympathetic design and development with no impact to existing bulk and scale and is consistent with the existing and future character of the area. The proposal is not offensive, or unsympathetic in a streetscape context nor the context from Manly, and therefore the variation can be supported by Northern Beaches Council.

2. The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable. *Wehbe v Pittwater Council at [46]*

Comment: It would indeed be unreasonable for Council to refuse the development that is proposed by way of a variation as the proposal does not have any adverse impacts on the immediate amenity of the area. The development has been designed with the necessary sensitivity to complement existing buildings and the natural landform of the area. There is no adverse visual impact associated with the form and structures proposed.

3. The development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the stand is unnecessary and unreasonable: *Wehbe v Pittwater Council at [47]*.

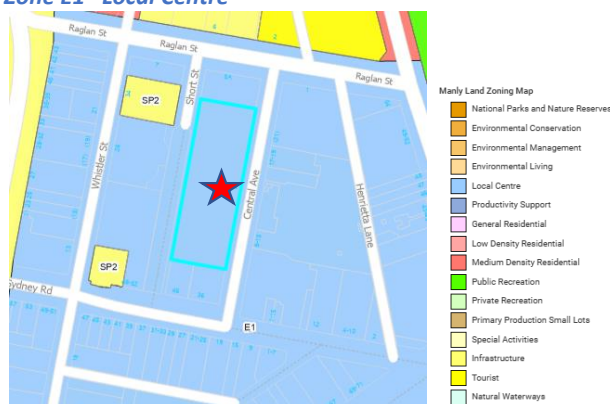
Comment: Whilst the proposal seeks a variation to Councils numerical Height of Building standard, it is consistent with the relevant objectives (as outlined previously in this report).

A review of other developments within the immediate area and approvals granted show that the development standard for Height of Buildings has been virtually abandoned or destroyed by Council's own decisions in granting development consents, hence compliance with this development standard is unnecessary and unreasonable.

4. The relevance of the zoning provisions of the land to which the development is proposed.

Zoning Map

Zone E1 Local Centre



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1 Objectives of zone

- To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.
- To encourage investment in local commercial development that generates employment opportunities and economic growth.
- To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.
- To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.
- To minimise conflict between land uses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery.
- To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.
- To create urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment.

2 Permitted without consent

Home-based child care; Home businesses; Home occupations

3 Permitted with consent

Amusement centres; Boarding houses; Car parks; Centre-based child care facilities; Commercial premises; Community facilities; Creative industries; Early education and care facilities; Electricity generating works; Entertainment facilities; Environmental protection works; Flood mitigation works; Function centres; Group homes; Home industries; Hostels; Hotel or motel accommodation; Information and education facilities; Local distribution premises; Medical centres; Oyster aquaculture; Passenger transport facilities; Places of public worship; Public administration buildings; Recreation areas; Recreation facilities (indoor); Registered clubs; Respite day care centres; Roads; Service stations; Shop top housing; Signage; Tank-based aquaculture; Tourist and visitor accommodation; Veterinary hospitals; Waste or resource transfer stations

4 Prohibited

Any development not specified in item 2 or 3

Comment: The relevance of the zone objectives are assessed below:

Clause 4.6(4)(a)(ii) states that a request for exemption from a development standard must establish that the proposed variation is consistent with both the objectives of the zone and standard.

The site is zoned E1 Local Centre pursuant to MLEP2013. The proposed alterations and additions to the existing residential component of the existing mixed-use building are consistent with the objectives of the zone, as follows:

- The proposal invests in local residential development that generates employment and economic growth.
- The proposal maintains and enhances the existing urban form with the introduction of the glass balustrades that are consistent with the architecture of the building and will not detract from the streetscape and bulk and scale of the precinct.

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Sufficient environmental planning grounds

1. First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard"

Comment: Sufficient environmental planning grounds exist to justify the height of buildings variation namely the retention of the existing building height noting that the proposal will not alter the existing variation on site. Further justification to support the proposed variation is provided below:

- The LEC planning principles on Height of Building relating to the height, bulk and scale, including compatibility between subject buildings and its surrounding context to ensure the proposal is compatible with its context. The planning principle seeks qualification of the following:

Planning principle: assessment of height and bulk

· The appropriateness of a proposal's height and bulk is most usefully assessed against planning controls related to these attributes, such as maximum height, floor space ratio, site coverage and setbacks. The questions to be asked are:

Are the impacts consistent with impacts that may be reasonably expected under the controls? (For complying proposals this question relates to whether the massing has been distributed so as to reduce impacts, rather than to increase them. For non-complying proposals the question cannot be answered unless the difference between the impacts of a complying and a non-complying development is quantified.)

How does the proposal's height and bulk relate to the height and bulk desired under the relevant controls?

· Where the planning controls are aimed at preserving the existing character of an area, additional questions to be asked are:

Does the area have a predominant existing character and are the planning controls likely to maintain it?

Does the proposal fit into the existing character of the area?

· Where the planning controls are aimed at creating a new character, the existing character is of less relevance. The controls then indicate the nature of the new character desired. The question to be asked is:

Is the proposal consistent with the bulk and character intended by the planning controls?

· Where there is an absence of planning controls related to bulk and character, the assessment of a proposal should be based on whether the planning intent for the area appears to be the preservation of the existing character or the creation of a new one. In cases where even this question cannot be answered, reliance on subjective opinion cannot be avoided. The question then is:

Does the proposal look appropriate in its context?

Note: the above questions are not exhaustive; other questions may also be asked.

In addressing the above planning principals, the benefits of the proposal, represents a new balcony balustrade that is compliant with the Building Code of Australia, therefore ensuring safety to the building occupants and visitors.

From a planning perspective, there is sufficient environmental planning grounds to justify the variation to the Height of Building development standard for the following reasons:

- The objectives of the MLEP2013 Height of Building control are achieved notwithstanding the technical non-compliance.
- The objectives of the MLEP2013 E1 Local Centre zone are achieved notwithstanding the technical non-compliance.

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- The compliance with the development standard is both unreasonable and unnecessary given the existing building height is retained and the works are below the existing roof line.
- There are sufficient environmental planning grounds to support the proposed variation.
- The proposal is consistent with the existing bulk and scale of the area.
- The proposal has no adverse impacts to views or view corridors.
- The proposal does not impact existing solar access to private and public places.
- The breach in building height will not be noticeable and will have no adverse impacts on neighbouring properties. The proposal will not result in a building of an unacceptable bulk and scale.

The non-compliance does not result in any unacceptable environmental consequences in terms streetscape, or residential amenity. In this regard, I consider the proposal to be of a skilful design which responds appropriately to the constraints on the site and the existing bulk and scale. Such an outcome is achieved whilst realising the reasonable development potential of the land.

2. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31]

Comment: This report demonstrates that there is sufficient environmental planning grounds to justify contravening the development standard for Clause 4.3(2). The proposal has assessed the relevant impacts (if any) and has assessed the existing bulk, scale and mass of the building which will breach the development standard. This report finds that a merit assessment is applicable and determines that there is sufficient grounds to justify the breach to the Height of Buildings. The proposal has been skilfully designed and strategically located to not have an adverse impact to neighbouring properties. Therefore, the development as proposed is sufficiently justified to contravene the development standard.

Is the proposed development in the public interest?

The Consent Authority must be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of:

- a. the particular development standard;
- b. the zone in which the development is proposed to be carried out.

Comment: As demonstrated in this request, the proposed development is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. The proposal is in the public's interest as there is very little public benefit in maintaining the development standard of Height of Building applicable to this site as the breach is existing. Additionally, the building improvements add significant amenity and safety benefits through a new compliant balcony balustrade. Council should encourage such developments via support of positive intention to upgrade sites within the Northern Beaches LGA.

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

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Secretary's Concurrence

Under clause 4.6(5), in deciding whether to grant concurrence, the Secretary must consider the following matters:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.*

Comment: The contravention of the development standard will not result in any consequences for State or regional environmental planning.

There would be no public benefit in maintaining the development standard in this instance for the following reasons:

- The variation to the Height of Building development standard does not give rise to any adverse environmental impacts. As such, the maintenance of the development standard in this specific instance would not provide any public benefit and would hinder the orderly and economic development of the site.
- Maintaining the development standard, in the context of this site, would be inconsistent with the objectives of the zone, and the Act, as it would be inconsistent with the surrounding developments.
- The breach to the development standard is existing and not exacerbating through the proposal.

By Planning Circular dated 5th May 2020, the Secretary of the Department of Planning & Environment advised that consent authorities can assume the concurrence to clause 4.6 request except in the circumstances set out below:

- Lot size standards for rural dwellings;
- Variations exceeding 10%; and
- Variations to non-numerical development standards.

The circular also provides that concurrence can be assumed when an LPP is the consent authority where a variation exceeds 10% or is to a non-numerical standard, because of the greater scrutiny that the LPP process and determinations are subject to, compared with decisions made under delegation by Council staff.

Concurrence of the Secretary can therefore be assumed in this case. There are no other relevant matters required to be taken into account by the Secretary.

Summary and Conclusion

It is therefore submitted that Clause 4.6 is applicable to the subject development in respect to the variation to clause 4.3(2) Height of Building and this statement verifies that compliance with the provisions of clause 4.3(2) would be both unreasonable and unnecessary in the circumstances of this case. The development is consistent with the objectives of Clause 4.6 as per below:

- 1(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*

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1(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

A variation to the strict application of Council's Height of Buildings development standard is considered appropriate for the site at 22 Central Avenue, Manly.

It is acknowledged that the purpose of Clause 4.6 is to provide an appropriate degree of flexibility in applying certain development standards. In this regard the Height of Building of the site should be assessed on a greater numerical figure, noting the sites constraints and the unique nature of the locality in a varying degree of development types. Given the proposed application is consistent with similar approvals granted in the area, Council's assessment should be focused on this numerical allowance as opposed to the variation to the specific standard. By providing flexibility in this regard, the subject proposal is capable of achieving a better development and design outcome which adequately caters for residential needs within the Northern Beaches LGA in particular the Manly precinct. As noted under the review of Clause 4.3 within the Statement of Environmental Effects, the proposal is consistent with the objectives of Clause 4.3. From a planning perspective, there is sufficient environmental planning grounds to justify the variation to the Height of Building development standard for the following reasons:

- The objectives of the MLEP2013 Height of Building control are achieved notwithstanding the technical non-compliance.
- The objectives of the MLEP2013 E1 Local Centre zone are achieved notwithstanding the technical non-compliance.
- The compliance with the development standard is both unreasonable and unnecessary given the existing building height is retained and the works are below the existing roof line.
- There are sufficient environmental planning grounds to support the proposed variation.
- The proposal is consistent with the existing bulk and scale of the area.
- The proposal has no adverse impacts to views or view corridors.
- The proposal does not impact existing solar access to private and public places.
- The breach in building height will not be noticeable and will have no adverse impacts on neighbouring properties. The proposal will not result in a building of an unacceptable bulk and scale.

As outlined above, the proposed development is consistent with the underlying objectives of the Height of Building standard, notwithstanding the proposed variation. The permissible Height of Building control does not align with the permissible height on the site, nor several built form controls of the MDCP2013. This essentially limits any redevelopment potential of the site without varying Council's standards.

In addition to the above justification, the proposal is considered to meet the intent of Council's controls relating to Height of Building, the E1 Local Centre zone objectives and the desired future character of this precinct. It is therefore submitted that the non-compliance with the Height of Building Clause 4.3(2) is acceptable, and flexibility should be exercised by Council as a better outcome is achieved for the site and the immediate locality. It is noted the assessment has been undertaken in relation to the most recent court case *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582. The variation under Clause 4.6 is to vary the Height of Building control to give Northern Beaches Council the power to grant development consent to the proposed development.